87-417

No. 87-

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

GARY WILLOUGHBY,

Petitioner,

v.

CENTRAL ILLINOIS LIGHT COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED*

1. May a defendant in a state court action for retaliatory discharge remove the case to federal court whenever the defendant asserts that the claim is preempted by a collective bargaining agreement and section 301 of the Labor-Management Relations Act?

2. Does 28 U.S.C. § 1445(c), which bars removal of an action arising under state workers compensation laws, preclude removal of a claim for retaliatory discharge filed under state law which forbids discharge for pursuing rights under that state's workers compensation laws?

3. Does section 301 of the Labor-Management Relations Act preempt states from protecting employees against being discharged for seeking benefits under the state's workers compensation law, simply because the employee is a member of a union that has negotiated a grievance and arbitration procedure for resolving disputes with the employer about the collective bargaining agreement?

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*All parties to the proceeding below are listed in the caption. In the court of appeals, this case was consolidated with *Hanneken v. Dixon Distributing Co. and Robert L. Dixon,* No. 86-1896, solely for purposes of oral argument.

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IN THE

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No. 87-

GARY WILLOUGHBY,

Petitioner,

v.

CENTRAL ILLINOIS LIGHT COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Gary Willoughby petitions the Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The decision of the district court is unreported, and is set forth at pages 3a to 13a of the appendix to this petition (App. 3a to 13a). The decision of the court of appeals, affirming the district court on the basis of *Lingle v. Norge,*

823 F.2d 1031 (7th Cir. 1987) (*en banc*), was designated as not for publication and is set forth at App. 1a to 2a. The decision in *Lingle v. Norge* appears in the Appendix to the Petition for a Writ of Certiorari in *Lingle v. Norge*, No. 87-259, cited here as "L. Pet. App.", at pages 1a to 47a, copies of which have been furnished to the respondent here.

JURISDICTION

The judgment of the court of appeals was entered on June 29, 1987, and is set forth at 14a-15a. The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

28 U.S.C. § 1331 provides,

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1441 provides, in pertinent part,

> (a) Except as otherwise provided by an Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed . . . to the district court of the United States for th[at] district . . . .
>
> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right under the Constitution, treaties, or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which the action is brought.

28 U.S.C. § 1445(c), provides,

> A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185(a), provides,

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Ill. Rev. Stat. 1975, ch. 48, ¶ 138.4(h), provides:

> It shall be unlawful for any employer, insurance company or service or adjustment company to interfere with, restrain or coerce an employee in any manner whatsoever in the exercise of the rights and remedies granted to him or her by th[e Workers Compensation] Act or to discriminate, attempt to discriminate, or threaten to discriminate against an employee in any way because of his or her exercise of the rights or remedies granted to him or her by this Act.
>
> It shall be unlawful for any employer, individually or through any insurance company or service or adjustment company, to discharge or to threaten to discharge, or to refuse to rehire or recall to active service in a suitable capacity an employee because of the exercise of his or her rights or remedies granted to him or her by this Act.

STATEMENT

A. Facts.

On January 17, 1984, petitioner Gary Willoughby suffered a back injury in the course of his employment in the gas construction department of respondent Central Illinois Light Company in Peoria County, Illinois. Respondent's employees, including Willoughby, are represented in collective bargaining by Local 51 of the International Brotherhood of Electrical Workers, and are covered by a collective bargaining agreement which guarantees employees the right to return to work following recuperation from an on-the-job injury. Article VIII, Section 15. This agreement also provides a grievance and arbitration procedure for the resolution of disputes about the collective bargaining agreement or about claims that an employee has been "treated unjustly." Article X, Section 3.

On January 30, 1984, petitioner filed a written claim with respondent regarding the back injury that he had suffered, thereby initiating the process of seeking benefits under the Illinois Workers Compensation Act. On several subsequent occasions, petitioner was warned that, if he pursued his claims under that Act, he would "pay the consequences." On November 12, 1984, petitioner's doctor released him to return to work, but respondent refused to reinstate him; ultimately, on December 19, 1984, respondent terminated petitioner's employment. Petitioner contends that he was not returned to work following his doctor's release, and was ultimately terminated, because respondent was following through on its threat to make him "pay the consequences" for asserting his rights under the state workers compensation statute.

B. Proceedings Below.

On December 10, 1985, petitioner filed an action in the Circuit Court of Illinois for Peoria County, alleging that respondent had violated section 26 of the Illinois Workers Compensation Act, Ill. Rev. Stat. Chapter 48, ¶ 138.4(h), by threatening him with retaliation if he pursued his rights under that Act, and then by terminating his employment when he continued to pursue his rights rather than withdraw his claim. Petitioner's complaint sought compensatory and punitive damages, and it relied solely on the Illinois law of retaliatory discharge – that is, the complaint neither mentioned the collective bargaining agreement, nor stated a claim which, in order to prevail, would have required reference to that agreement.

On January 6, 1986, respondent filed a petition for removal in the United States District Court for the Central District of Illinois, asserting that because petitioner was covered by a collective bargaining agreement, his claim under Illinois law was preempted by section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185, and that the district court had jurisdiction of the action under 28 U.S.C. § 1331 by virtue of respondent's preemption defense. On January 10, 1986, respondent moved to dismiss on preemption grounds.

On May 30, 1986, the district court ruled both that removal was proper and that the complaint should be dismissed. App. 13a. It acknowledged that the complaint did not, on its face, state a cause of action under federal law, App. 5a, 12a, but invoked the "artful pleading" doctrine to find that the complaint presented a question of federal law – namely, whether the state law claim was preempted by section 301. App. 5a. Under this Court's decision in *Allis-Chalmers Corp. v. Lueck,* 471 U.S. 202 (1985), a

state law claim is preempted if, as a matter of federal law, it is "inextricably intertwined" with a collective bargaining agreement. App. 6a. This federal question, Judge Mihm decided, was a sufficient basis to find that petitioner's claim "arise[s] under the . . . laws . . . of the United States," within the meaning of 28 U.S.C. § 1331, and thus the case was removable under 28 U.S.C. § 1441. App. 6a-7a.

The district court then decided that petitioner's claim was preempted by section 301. It recognized that, in *Midgett v. Sackett-Chicago,* 105 Ill.2d 143, 473 N.E.2d 1280 (1984), the Illinois Supreme Court had held that the state cause of action for retaliatory discharge should be extended to employees covered by collective bargaining agreements, App. 8a, and that petitioner was not "bringing a claim for breach of the collective bargaining agreement." App. 12a. Nevertheless, the court reasoned that collective bargaining agreements establish the rights and terms of employment of union members, and "these matters do not exist separate and apart from the terms of the collective bargaining agreement." App. 11a. Moreover, if states were allowed to create a right of retaliatory discharge, employees would be tempted to bypass their grievance procedures by relying on state tort law. *Id.* Thus, it concluded, "a state created tort for retaliatory discharge is preempted under § 301." *Id.* Having decided that the state claim was preempted, the court added that 28 U.S.C. § 1445(c) did not bar its removal. App. 12a.

After the case was argued on appeal, the Seventh Circuit issued an *en banc* decision on similar issues of preemption and removal. *Lingle v. Norge,* 823 F.2d 1031 (1987). In *Lingle,* the Court first decided that 28 U.S.C. § 1445(c), which forbids removal of claims arising under the workers compensation laws, was no barrier to removal because re-

taliatory discharge is a tort and not a workers compensation claim, *id.* at 1038-1039, L. Pet. App. 13a, and in any event the meaning of the statutory term "workers compensation laws" is itself a federal question, regardless of the label attached by the state. *Id.* at 1039, L. Pet. App. 14a. Moreover, because "the determination of whether the tort of retaliatory discharge arises under federal law, and is therefore removable, is a federal question, . . . the plaintiffs' retaliatory discharge claims arise under federal law, so that § 1445(c) does not bar removal." *Id.*, L. Pet. App. 15a.

Next, the court decided that, although the complaints did not invoke a collective bargaining agreement, any claim for retaliatory discharge brought by a worker covered by a collective bargaining agreement must necessarily state a claim under the agreement's "just cause" provisions, and thus is merely an "artful" attempt to evade federal jurisdiction. *Id.* at 1040, L. Pet. App. 16a-17a. The court included a general reference to *Caterpillar v. Williams,* 107 S.Ct. 2425 (1987), in which this Court had held that 28 U.S.C. §§ 1331 and 1441 do not authorize defendants to remove to federal court employees' claims that they had been denied employment in contravention of a contract that was separate from the collective bargaining agreement. Despite the Seventh Circuit's passing references to *Caterpillar,* 823 F.2d at 1037 and n. 7, 1040 n. 11, 1044, L. Pet. App. 10a, 11a n.7, 17a n.11, 24a, it made no effort to explain why, although a contract claim by workers covered by a collective bargaining agreement is not removable, a tort claim brought by such workers is removable.

Finally, the court of appeals decided that retaliatory discharge claims are, in fact, preempted by section 301 because they are inextricably intertwined with collectively-bargained just cause provisions. It recognized that the Il-

linois Supreme Court had both formulated a cause of action which does not depend on an interpretation of the collective bargaining agreement, and held that such claims are not preempted, *Gonzalez v. Prestress Engineering Corp.*, 115 Ill.2d 1, 503 N.E.2d 308 (1986). Nevertheless, the Court asserted, a just cause provision necessarily extends at least as far as the retaliatory discharge cause of action. 823 F.2d. 1044, L. Pet. App. 24a-25a. Thus, in defining the state claim and deciding whether its elements were satisfied, the courts are necessarily making determinations that could be made under the collective bargaining agreement, and federal labor policy requires those determinations to be made by arbitrators rather than courts. 823 F.2d at 1046, L. Pet. App. 28a-29a.

Judge Ripple, in a dissent joined by Judge Cudahy, did not address the jurisdictional issues, but proceeded straight to the preemption issue. He focused on *Allis-Chalmers,* in which this Court decided that the state claims there were preempted, but also cautioned that preemption would not apply to "state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract." 823 F.2d at 1052, L. Pet. App. 41a, *quoting* 471 U.S. at 212. Moreover, he pointed out that this Court had previously dismissed, for want of a substantial federal question, an appeal from a decision by the Hawaii Supreme Court that the Railway Labor Act did not preempt that state's retaliatory discharge cause of action. 823 F.2d at ____ n.5, L. Pet. App. 46a n.5, *citing Pan American World Airways v. Puchert,* 472 U.S. 1001 (1985). Because retaliatory discharge claims neither depend on rights established by the contract, nor require reference to the contract, there is no basis for holding them to be preempted. 823 F.2d at 1055, L. Pet. App. 43a.

Immediately following the decision in *Lingle,* the court

of appeals affirmed the district court's decision in this case on the basis of *Lingle,* and designated the opinion as not for publication. App. 1a-2a.

REASONS FOR GRANTING THE WRIT

Like *Lingle v. Norge,* pending on a petition for a writ of certiorari, No. 87-259, and *Pratt & Whitney v. Baldracchi,* pending here as No. 87-318, this case presents the question whether state retaliatory discharge claims are preempted, insofar as unionized employees are concerned, by section 301 of the LMRA. Like *Baldracchi*, but unlike *Lingle*, where the basis for removal was diversity of citizenship, this case also presents questions of the propriety of removing this case to federal court solely on the basis that respondent's preemption defense makes the case one that arises under federal law, and whether removal of this claim, which is based on a state's worker's compensation laws, is forbidden by 28 U.S.C. § 1445(c).

1. Although the court below cited this Court's decision in *Caterpillar v. Williams,* 107 S.Ct. 2425 (1987), which had been decided only two weeks before the *en banc* decision in *Lingle* was issued, it disregarded the plainly contrary holding of *Caterpillar,* and made no attempt to explain why the preemption defense is sufficient to confer jurisdiction in this case, despite the fact that it was insufficient to do so in *Caterpillar.* This failure to follow the teaching of *Caterpillar* is the first basis for granting review.

In *Caterpillar,* several employees brought an action in state court, alleging that the company had breached a promise that had been made to them, before they worked in the bargaining unit represented by their union. The promise was alleged to have been made completely separate

from any collective bargaining agreement, and involved a commitment that if the facility at which they worked were ever closed, the company would provide other employment opportunities for them. After the employees were transferred into the bargaining unit, the company closed their plant and denied them other employment, and the employees sued in state court. The company removed to federal court on the theory that, when the employees entered the bargaining unit, any promises to them had been merged into the collective bargaining agreement, and that because the employees' only viable claim was under that agreement, the claims arose under federal law and were thus within the original jurisdiction of the federal courts under 28 U.S.C. § 1331.

This Court disagreed, concluding that a federal preemption defense does not convert a claim under state law into one arising under federal law. It was true, the Court noted, that the plaintiffs might have chosen to assert rights under the collective bargaining agrement, but they had chosen to rely solely on rights found in a different contract. Not all contracts are merged into a collective bargaining agreement, and "a plaintiff is permitted to assert legal rights *independent* of that agreement, including state-law contract rights, so long as the contract relied on is not a collective bargaining agreement." *Id.* at 2430-2431 (emphasis added).

This Court acknowledged its prior holdings that, because section 301 so completely preempts state laws which purport to govern the interpretation or application of a collective bargaining agreement, an employee who seeks to assert rights under a collective bargaining agreement is actually relying on federal law, even if he claims that he is relying on state law. *Id.* at 2430, *citing Avco Corp. v.*

Machinists, 390 U.S. 557 (1968). But where the employee seeks to rely on a separate source of rights, the "complete preemption" doctrine does not apply. *Id.* at 2432. Even if the employer wishes to argue that the creation or assertion of the independent rights was somehow barred by federal labor law, that defense must be raised in state court: "The 'artful pleading' doctrine cannot be invoked in such circumstances." *Id.*

The Seventh Circuit's jurisdictional determination in this case is directly contrary to *Caterpillar.* As in *Caterpillar,* petitioner here worked in a union shop but chose not to assert rights under his collective bargaining agreement, relying instead solely on his rights under Illinois tort law. Although respondent argues here, as did the employer in *Caterpillar,* that it acted for reasons expressly authorized by the collective bargaining agreement, or that the collective agreement precludes resort to a judicial forum, that is not a basis for removal. That defense must be litigated in state court, even if federal law were ultimately held to supersede state law or state court procedures. Because, under *Caterpillar,* an employer cannot remove a case based on state law contract rights to federal court, but must litigate its preemption defense in the state court, *a fortiori* a case based on state tort rights cannot be removed by virtue of the assertion of a preemption defense. In neither situation does the existence of a preemption defense convert a state cause of action based on a source other than a collective bargaining agreement into a "claim arising under the . . . laws . . . of the United States" within 28 U.S.C. § 1331, which is therefore removable under 28 U.S.C. § 1441.

Although the Seventh Circuit took note of the decision in *Caterpillar,* it completely failed to take this Court's

reasoning into account. Accordingly, the Court may wish to summarily reverse with instructions to the courts below to remand the case to the Illinois courts.

2. Petitioner does not contend that the second question presented – the effect of the anti-removal provision of 28 U.S.C. § 1445(c) – is independently worthy of review by this Court. However, if the Court decides to give plenary consideration to the preemption/removal question, it should consider the effect of section 1445(c) on removal of petitioner's retaliatory discharge claim, both in the interest of completeness, and because section 1445(c) provides an alternative basis for denying federal jurisdiction in this case.

Under section 1445(c), actions "arising under the workmen's compensation laws" of a state may not be removed to federal court even if they are otherwise properly removable. Every court outside the Seventh Circuit which has addressed the issue has held that claims for retaliatory discharge for having exercised rights under a state's workers compensation statute are nonremovable under 28 U.S.C. § 1445(c). *Roberts v. Citicorp Diners Club,* 597 F. Supp. 311, 314-315 (D.Md. 1984); *Thomas v. Kroger Co.,* 583 F.Supp. 1031, 1036-1037 (S.D. W.Va. 1984); *Green v. Hajoca Corp.,* 573 F.Supp. 1120 (E.D. Va. 1983). *Accord, Alexander v. Westinghouse Hittman Nuclear,* 612 F.Supp. 1118 (N.D. Ill. 1985). *Cf. Baldracchi v. Pratt & Whitney Aircraft Div.,* 814 F.2d 102, 107 (2d Cir. 1987), *cert. pending*, No. 87-318 (suggesting that section 1445(c) extends to protect state retaliatory discharge claims against preemption). *But cf. Johnson v. Hussmann Corp.,* 805 F.2d 795 (8th Cir. 1986) (upholding removal of workers compensation retaliatory discharge claim, without discussing section 1445(c)). Although most of these decisions were made in the district courts, they are the practical equivalent of

court of appeals decisions for the purpose of Supreme Court Rule 17.1(a), because decisions to remand to the state courts are not appealable. 28 U.S.C. § 1447(c).

The court below held that retaliatory discharge claims are removable, both because in Illinois the claim is based on tort, rather than the workers compensation statute itself, and because, in any event, that state claim is preempted by federal labor law and so cannot be considered to have arisen under state workers compensation law. Neither reason is persuasive. First, section 1445(c) does not simply bar removal of claims arising under state workers compensation *statutes*, but under all "workmen's compensation laws," which obviously extends to the state common law. Particularly because Illinois has recognized the retaliatory discharge cause of action in order to further implement the objectives of its workers compensation laws, the Congressional objective of preventing employers from invoking federal jurisdiction to frustrate the enforcement of workers compensation laws requires that employees be permitted to choose a state forum for the litigation of these kinds of retaliatory discharge claims without fear or removal.

Nor does the availability of a federal preemption defense override the Congressional determination that an employee may choose where to litigate all elements and defenses to claims arising under a state's workers compensation laws. Barring removal would not frustrate the federal policy favoring arbitration, as the court below feared, 823 F.2d at 1039, L. Pet. App. 14a, because removal has no effect on the policy favoring arbitration; it only changes the court in which the federal policy is initially applied, subject to eventual review in this Court. The state and federal courts are equally able to decide whether a claim under the workers compensation laws has been superseded by sec-

tion 301 in conjunction with a collective bargaining agreement or by that agreement's arbitration provisions. Congress decided in enacting section 1445(c) that the state courts are the primary adjudicators of claims and defenses under state workers compensation laws, and the fact that it may ultimately be determined that the state law claim is preempted by federal law is no basis for disregarding Congress' will in section 1445(c).

3. The third question presented — whether state retaliatory discharge claims are preempted by section 301 — seeks review of a decision that is contrary to the holdings of several other circuits as well as to this Court's decisions in *Allis-Chalmers Corp. v. Lueck, supra,* and numerous other cases discussed in the certiorari petition in *Lingle v. Norge,* No. 87-259, at 8-13. *See also Caterpillar v. Williams,* 107 S.Ct. 2425, 2431-2432 and n.10 (1987) (reaffirming limiting language of *Allis-Chalmers*). Because the *Lingle* petition states all of the arguments that petitioner would present here, we do not repeat those arguments now. *See also Pratt & Whitney v. Baldracchi,* No. 87-318.

Despite the importance of this question, petitioner does not ask the Court to set it down for plenary argument in this Court *if* the Court grants review in *Lingle,* where it is the only question presented. In that regard, the undersigned counsel also represent the petitioner in *Lingle,* and hence no purpose would be served by briefing the identical issue twice. If review is not granted in *Lingle,* however, the Court should grant review in this case on the preemption issue along with the two jurisdictional and removal issues presented.

CONCLUSION

The petition for a writ of certiorari should be granted, or the petition should be granted and the decision below summarily reversed for lack of subject matter jurisdiction, and remanded with instructions to remand to the state court.

Respectfully submitted,

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September 11, 1987

APPENDIX

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
ARGUED DECEMBER 12, 1986

June 29, 1987 UNPUBLISHED ORDER
NOT TO BE CITED
PER CIRCUIT RULE 53

Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge
Hon. ROBERT A. GRANT, Senior District Judge*

PATRICK HANNEKEN, Plaintiff-Appellant, No. 86-1896 v. DIXON DISTRIBUTING COMPANY, an Illinois Corporation and ROBERT L. DIXON, Defendant-Appellees.	Appeal from the United States District Court for the Southern District of Illinois. No. 86 C 5006 William Beatty, Judge.
and	
GARY WILLOUGHBY, Plaintiff-Appellant No. 86-1973 v. CENTRAL ILLINOIS LIGHT COMPANY, Defendant-Appellee.	Appeal from the United States District Court for the Central District of Illinois. No. 86 C 1002 Michael M. Mihm, Judge.

ORDER

These two cases were consolidated for appeal. Both cases present the narrow issue of whether § 301 of the

*The Honorable Robert A. Grant, Senior District Judge for the Northern District of Indiana, sitting by designation.

Labor Management Relations Act, 29 U.S.C. § 185(a) (1978), preempts the Illinois tort of retaliatory discharge. In *Lingle v. Norge Division of Magic Chef, Inc.*, No. 85-2971 (7th Cir. June 23, 1987) (en banc), this court concluded that § 301 preempted the tort of retaliatory discharge.

In both *Hanneken* and *Dixon Distributing,* the district court found that the plaintiff's claim of retaliatory discharge was preempted. In light of *Lingle,* we affirm the judgments of the district courts.

AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

GARY WILLOUGHBY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 86-1002
	)	
CENTRAL ILLINOIS LIGHT COMPANY,	)	
	)	
	)	
Defendant.	)	

ORDER

The Plaintiff, Gary Willoughby, brought suit in this case, alleging that the Defendant had threatened to discharge him and did in fact discharge him for electing to exercise his rights under the Workers' Compensation Act of Illinois. The Plaintiff filed his claim in the Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, in December, 1985, and alleged that the Defendant's acts violated the provisions of the Illinois Workers' Compensation Act, Ill.Rev.Stat., Ch. 48, ¶ 138.4(h) (1983).

In response to the complaint, the Defendant filed in this Court a petition for removal of the case to federal court and a motion to dismiss for failure to state a claim for which relief can be granted. The Court will address both the petition for removal and the motion to dismiss in this opinion.

PETITION FOR REMOVAL

The Defendant argued that the petition for removal in this case is proper under 28 U.S.C. § 1441(b) because the complaint states a "claim or right arising under the Constitution, treaties or laws of the United States." The Defendant argued that the "artful pleading" doctrine has application to the facts of this case, and that the Court has a duty to look beyond the language chosen by the Plaintiff in his pleading in order to focus on the substantive allegations of the complaint. According to the Defendant, this inquiry would lead the Court to conclude that the Plaintiff is seeking redress for a right which necessarily derives from the collective bargining agreement that exists between the parties. Collective bargaining agreements and their interpretation are governed by § 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Therefore, the Plaintiff's cause of action is subject to removal and the fact that the Plaintiff did not characterize his complaint as a federal claim is not determinative of this issue.

The plaintiff responded by stating that his complaint does not assert a federal cause of action which can be removed to federal court. Rather, the complaint pleads a state cause of action which is separate and independent from any federal action. The additional facts which the Defendant requested that the Court look to in determining the issue of removal are not necessary to the Plaintiff's cause of action. Therefore, the Court should limit its inquiry regarding the petition for removal to the face of the complaint under what is known as the "well-pleaded complaint" doctrine. The face of the complaint states a cause of action for a tort arising under state law. Because there is no diversity of citizenship, it would be improper for the Court to remove this action from state to federal court.

Moreover, the Plaintiff argued that removal is expressly barred by 28 U.S.C. § 1445(c), which states:

> "A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States."

The Plaintiff takes the position that his claim is a tort claim arising under ¶ 138.4(h) of the Illinois Workers' Compensation Act and cannot be removed under the terms of § 1445(c).

The Court finds that this case does present a situation in which the Court must rely on the "artful pleading" doctrine to decide the nature of the case before it. The purpose of this doctrine, as explained by the Seventh Circuit in the case of *Oglesby v. RCA Corp.*, 752 F.2d 272 (7th Cir. 1985), is to prevent a plaintiff from defeating a defendant's right of removal by omitting from his complaint direct references to essential elements of his claim which would identify it as a claim grounded in federal law. The general rule is that in order for a case to be removable, the federal claim must appear on the face of the complaint, unaided by any other pleadings, including the defendant's answer or removal petition. Nonetheless, the Seventh Circuit does recognize that a plaintiff must not be allowed to deny a defendant his right to a federal forum by artfully disguising an essentially federal law claim in terms of state law.

In the present case, the Plaintiff asserts that he is stating a cause of action sounding in tort for violation of ¶ 138.4(h) of the Illinois Workers' Compensation Act, because the Defendant threatened to fire and did fire him in retaliation for his filing a claim under the Illinois Workers' Compensation Act. The Court does not find this

argument persuasive, in light of the United States Supreme Court's recent decision in *Allis Chalmers Corp. v. Lueck,* 105 S.Ct. 1904 (1985)

In *Lueck*, the Supreme Court reversed a decision of the Wisconsin Supreme Court which had held that the plaintiff's suit for the tort of bad faith in making disability payments did not arise under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a). The Supreme Court held that the tort action created by Wisconsin law for bad faith delay in making disability benefit payments due under a collective bargaining agreement was preempted by § 301 of the Labor Management Relations Act because the tort cause of action was "inextricably intertwined" with the terms of the labor contract, a matter governed by federal law. In arriving at that decision, the Court stated, "While the nature of the state tort is a matter of state law, the question whether the Wisconsin tort is sufficiently independent of federal contract interpretation to avoid preemption is, of course, a question of federal law." *Id.* at 1912-13.

On the facts of the present case, the Court concludes that it is a question of federal law whether the tort alleged in the complaint is independent of the rights established by the collective bargaining agreement and governed by federal law under the Labor Management Relations Act. Although the claim is stated in terms of a tort arising under state law, the Defendant's actions which the Plaintiff is challenging are governed by the terms of the collective bargaining agreement between the Defendant and Local Union 51 of the International Brotherhood of Electrical Workers. Because the Court must determine as a matter of federal law whether the claim stated by the Plaintiff arises under state tort law or should be governed by federal law,

this lawsuit presents a claim or right arising under the laws of the United States. The Court orders that the Defendant's petition for removal is GRANTED.

MOTION TO DISMISS

Because the Court has determined that removal of this case to federal court is proper, the Court will now address the matter of the Defendant's motion to dismiss. The Defendant argued that the Court should dismiss the Plaintiff's claim because the state tort alleged is preempted by federal labor law as set forth in § 301 of the Labor Management Relations Act. The Defendant characterized the Plaintiff's complaint as a claim for wrongful discharge. According to the Defendant, this is a matter of contract interpretation governed by federal labor law because the collective bargaining agreement in force between the Plaintiff's Union and the Defendant defines the terms of Plaintiff's employment.

The Plaintiff responded by saying that the claim he is asserting is a separate and independent state claim, based on state tort law and arising under the Illinois Workers' Compensation Act. The Plaintiff pointed to language in the United States Supreme Court case *Allis Chalmers Corp. v. Lueck,* 105 S.Ct. 1904 (1985), which emphasizes the narrowness of the Court's holding in that case. The Court said: "Nor do we hold that every state-law suit asserting a right that relates in some way to a provision in a collective-bargaining agreement, or more generally to the parties to such an agreement, necessarily is preempted by § 301." *Id.* at 1916. The Plaintiff emphasized the Court's statement that "it would be inconsistent with congressional intent under [§ 301] to preempt state rules that prescribe conduct, or establish rights and obligations, in-

dependent of a labor contract" and argued that the particular tort claim before the Court is of such an independent nature. *Id.* at 1912

The Court begins its analysis with a look at the recent developments in the law in this area. In *Midgett v. Sackett-Chicago, Inc.*, 105 Ill.2d 143, 473 N.E.2d 1280 (1984), the Illinois Supreme Court held that a cause of action in tort exists under Illinois state law for discharge of union members covered by collective bargaining agreements in retaliation for filing workers' compensation claims. The Supreme Court recognized this tort of retaliatory discharge for union employees as a means of promoting a strong public policy of insuring that workers covered by the Workers' Compensation Act are protected. The Court added, in the face of a dissent joined in by three justices, that the recognition of this tort remedy would not have any perceptible effect on the use of arbitration in labor disputes.

This Court gives great deference to the Illinois Supreme Court's interpretation of state law and has carefully considered the Court's reasoning in arriving at its decision that a separate tort action exists for a retaliatory discharge action brought under the Illinois Workers' Compensation Act by union members covered under collective bargaining agreements. Nevertheless, the United States Supreme Court in *Allis Chalmers v. Lueck,* 105 S.Ct. 1904 (1985), established that federal courts have a duty to inquire into whether a state tort is sufficiently independent of federal contract interpretation to avoid preemption under § 301 of the Labor Management Relations Act. In the *Lueck* case, the Court noted that the Wisconsin Supreme Court had held that the tort claim involved in that case was independent of any contract claim arising under the collective bargaining agreement. Nonetheless, the Court found

that the duty involved in the state tort depended upon the terms of the collective bargaining agreement and that such questions of contract interpretation were governed by federal law. The Court concluded that the complaint should be treated as a § 301 claim or dismissed as preempted by federal labor-contract law because the resolution of the state-law claim was "substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract." *Id.* at 1916.

Subsequent to *Lueck*, the Seventh Circuit decided the case of *Vantine v. Elkhart Brass Manufacturing Company, Inc.*, 762 F.2d 511 (7th Cir. 1985). In *Vantine*, the plaintiff brought a tort action in state court for retaliatory discharge for filing a workmen's compensation claim under the Indiana Workmen's Compensation Act. The defendant moved to have the case removed to federal court, on the grounds that the plaintiff's complaint was based upon a theory of liability under § 301 of the Labor Management Relations Act because the basis of the lawsuit was a collective bargaining agreement in effect between the defendant and the plaintiff's union. The Seventh Circuit noted that the Supreme Court of Indiana had created a tort remedy for at will employees who have been discharged in retaliation for filing claims pursuant to the Indiana Workmen's Compensation Act. The Indiana Supreme Court had not previously considered the issue of whether such a state remedy existed for discharged union employees. The Seventh Circuit found that under Indiana law the employee's right not to be discharged for filing a workmen's compensation claim is adequately protected by the collective bargaining agreement. The court concluded that the employee's cause of action arose under § 301 of the Labor Management Relations Act rather than the Indiana Work-

men's Compensation Act and was properly removed by the defendant to federal district court. *Id.* at 517.

In one sense, the *Vantine* case is distinguishable from the instant case because the Illinois Supreme Court has expressly recognized a cause of action for union employees for discharge in retaliation for filing a workers' compensation claim. As the Seventh Circuit pointed out, "Central to the plaintiffs' arguments that their complaint alleges only a state cause of action and that the district court's jurisdiction is barred under 28 U.S.C. § 1445(c) is the assumption that Indiana would recognize a cause of action in tort for the retaliatory discharge of an employee covered by a collective bargaining agreement." *Id.* at 516-17. Such a statement by the Seventh Circuit suggests that the court might have ruled in favor of the plaintiffs had Indiana law expressly recognized a cause of action for retaliatory discharge for employees covered by a collective bargaining agreement.

The Seventh Circuit went on to state, however, "[B]ecause an allegation of discharge and retaliation for filing a workmen's compensation claim is an allegation of a breach of the collective bargaining agreement, it arises under section 301 of the Labor Management Relations Act rather than the Indiana Workmen's Compensation Act, *Cf., Allis Chalmers Corp. v. Lueck,* ____ U.S. ____, 105 S.Ct. 1904, 85 L.Ed 2d 206 (1985)." *Id.* at 517. This conclusion shifts the focus of the court's analysis from the policies of the state Workmen's Compensation Act to the interpretation and application of the collective bargaining agreement. Although this makes the reasoning of the *Vantine* court somewhat confusing, this holding by the Seventh Circuit suggests that there is a strong federal policy in favor of looking to the terms of a collective bargaining

agreement in order to protect an employee's rights, whether or not a state has sought to protect such an employee under its own tort laws.

Under this analysis, the Court holds that a tort action, brought by a plaintiff covered under a collective bargaining agreement, for discharge in retaliation for filing a Workmen's Compensation claim is inextricably intertwined with the rights and obligations created under the collective bargaining contract. The collective bargaining agreement establishes the rights of union members and the terms of their employment, and these matters do not exist separate and apart from the terms of the collective bargaining agreement. Furthermore, as the Supreme Court explained in *Lueck*, if the Court were to hold that the state tort was independent and separate, an employee could easily bypass the grievance procedure established in a collective bargaining agreement by artfully wording his grievance to state a cause of action sounding in tort.

Because federal law governs matters of interpretation of labor contracts, the Court holds that a state created tort for retaliatory discharge is preempted under § 301 of the Labor Management Relations Act. *See, Lingle v. Norge Division of Magic Chef, Inc.,* 618 F.Supp. (C.D. Ill. 1985). The Court does not believe that there is a significant difference between the tort claimed by the Plaintiff in this case and the tort of retaliatory discharge of a union employee recognized by the Illinois Supreme Court in *Midgett v. Sackett-Chicago, Inc.,* 105 Ill.2d 143, 473 N.E.2d 1280 (1984). Consequently, the Court respectfully disagrees with the decision of the Illinois Supreme Court to the extent it impacts upon the situation presently before the Court, pointing out that the Illinois Supreme Court did not have the benefit of the Supreme Court decision in

Lueck or the Seventh Circuit decision in *Vantine* when it made its decision in *Midgett*.

It is unfortunate that the *Lueck* Court did not give examples of the types of state-law suits which would relate to a collective bargaining agreement and not be preempted by § 301, as discussed in the last paragraph of *Lueck*. Nevertheless, the Court concludes that the *Lueck* decision is applicable to the facts before the Court and holds that federal labor law under § 301 does preempt a state law claim sounding in retaliatory discharge of a union employee.

The Plaintiff's final argument that the Court should not dismiss the complaint as preempted by federal labor law is that the Plaintiff has alleged that he is entitled to relief, not only on the basis of his wrongful discharge, but also because his employer threatened to discharge him if he filed a Worker's Compensation claim. The Court does not find this effort to distinguish the previously discussed cases persuasive. In particular, the Court points out that Article X of the collective bargaining agreement establishes a grievance and arbitration procedure that an employee must use when differences arise between the employer and the employee or when the employee believes he has been treated unjustly. This contract language is broad enough to encompass the Plaintiff's allegation that the Defendant threatened to discharge him if he filed a Workmen's Compensation Act claim. Furthermore, not only do these actions come within the terms of the collective bargaining agreement, but there is no allegation that the Plaintiff has used the grievance procedure or that he is bringing a claim for breach of the collective bargaining agreement.

In conclusion, the Plaintiff's claim, which he vigorously asserts states a cause of action under state law alone, is preempted by federal labor law, which makes 28 U.S.C. § 1445(c) inapplicable. The Plaintiff's complaint does not allege a breach of the collective bargaining agreement and, therefore, the complaint does not state a cause of action for which relief can be granted. The Court orders that the Defendant's Motion for Removal is GRANTED and the Defendant's Motion to Dismiss is GRANTED on the basis of federal preemption.

It is so ordered this 30th day of May, 1986.

/s/

Michael M. Mihm
United States District Judge

JUDGMENT – ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 29, 1987

Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge
Hon. ROBERT A. GRANT, Senior District Judge*

No. 86-1896
PATRICK HANNEKEN,
Plaintiff-Appellant,
vs.
DIXON DISTRIBUTING COMPANY, an Corporation, and ROBERT L. DIXON,
Defendant-Appellees.

Appeal from the United States District Court for the Sourthern District of Illinois.
No. 86 C 5006
Judge William Beatty.

No. 86-1973
GARY WILLOUGHBY,
Plaintiff-Appellant
vs.
CENTRAL ILLINOIS LIGHT COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the Central District of Illinois.
Peoria Division
No. 86 C 1002
Judge Michael M. Mihm.

The cases were heard on the records from the United States District Courts for the Southern District of Illinois, Alton Division, and Central District of Illinois, Peoria Division, and were argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgments of the said

*Hon. Robert A. Grant, Senior District Judge for the Northern District of Indiana, sitting by designation.

District Courts in these cases appealed from be, and the same are hereby AFFIRMED, with costs, in accordance with the order of this Court entered this date.

No. 87-417

Supreme Court, U.S.
FILED
OCT 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The Supreme Court of the United States

October Term, 1987

GARY WILLOUGHBY,

Petitioner,

v.

CENTRAL ILLINOIS LIGHT COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. May a unionized employee covered by a labor contract who is suing over his discharge avoid removal, and defeat federal court jurisdiction over the issue of preemption of his claim under Section 301 of the Labor-Management Relations Act, simply by framing a state court complaint to allege only a state tort cause of action over that discharge?

2. Does Section 301 of the Labor-Management Relations Act preempt a state court action for retaliatory discharge over a workers' compensation claim where the plaintiff is an employee represented by a union and covered by a collective bargaining contract which has:

   (1) specific provisions giving rights to employees and the employer in relation to, and governing discipline for misconduct as to, claimed workers' compensation injuries; and

   (2) binding arbitration for all claims that any employee "has been treated unjustly"?

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No. 87-417

In The
Supreme Court of the United States
October Term, 1987

GARY WILLOUGHBY,

Petitioner,

v.

CENTRAL ILLINOIS LIGHT COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION[1]

COUNTERSTATEMENT OF THE CASE

Petitioner Gary Willoughby was employed, prior to December 19, 1984, by Respondent Central Illinois Light Company in Peoria County, Illinois. App. 8a, paragraph 9. In that employment he was covered by and subject

[1] At the time this lawsuit was filed, Central Illinois Light Company was a wholly owned subsidiary of CILCORP Inc. Its non-wholly owned subsidiaries and affiliates are: CILCORP Investment Management Inc.; CILCORP Ventures Inc.; Tele-Sav Inc; and Randolph & Associates, Inc.

to a collective bargaining agreement negotiated in behalf of himself and his co-workers by Local 51 of the International Brotherhood of Electrical Workers (IBEW). App. 2a, paragraph 6.

On January 30, 1984, Willoughby filed a workers' compensation claim with Respondent. App. 7a, paragraph 4. Among other things, Willoughby's labor contract provides rights and obligations of both employees and Respondent to each other with respect to workers' compensation matters. Contract copies at App. 10a to 56a. In that regard, it includes the following provisions:

(Article VIII, Section 15–App. 38a)

> 15. Any employee of the Company covered by this Agreement who is injured while on duty shall be entitled upon recovery to his former position with full seniority rights provided he is physically qualified to return to work. It is understood that in case of the return of such an employee, other bargaining unit employees will consent to such demotions as are necessary to make room for him.

(Article III, Section 6–App. 20a)

> 6. Effective July 1, 1984, employees who are off work or injured while working for the Company and are eligible for Workmen's Compensation for temporary total incapacity for work in accordance with the Workmen's Compensation Act, Section 8, shall received from the Company the difference between the weekly compensation rate for temporary total disability and their basic rate of pay for forty (40) hours per week (gross pay less FICA, Federal, and State Withholding Taxes).
>
> In no case during the disability period will an employee receive less or more than his normal basic take-home pay that he was receiving prior to the injury. All authorized deductions, e.g. savings plan, union dues, insurance, etc. will continue to be withheld from the employee's disability pay on the same basis as prior to the injury. Company contributions for the Employees' Savings Plan and

> ESOP will continue on the same basis as prior to the injury. For withholding tax purposes during the disability period, exemptions claimed by the employee will be limited to the number of his legally eligible exemptions.
>
> Such disability payments are to continue until the Company physician releases the employee to return to work or until such time as the physician renders the employee wholly and permanently incapable of work.

Further in that regard, the labor contract provides for discipline of employees for certain misconduct in relation to workers' compensation matters:

(Article III, Section 7–App. 21a)

> 7. Any employee unable to work for the Company due to illness or accident who is discovered to be employed whether for himself or by another, or who is otherwise acting in a manner inconsistent with the claimed physical ailment, or who is acting in a manner which demonstrated [sic] an act of fraud, misleading [sic] or misrepresentation, shall be subject to disciplinary action.

(Article III, Section 8–App. 21a)

> 8. The Company reserves the right to seek an additional medical opinion at the Company's cost and expense by means of a physical examination, or otherwise by an accredited physician of the Company's own choosing. If a disagreement arises as to the opinions as to the employee's state of health, an impartial examination made by a physician chosen by the two physicians who have a disagreement concerning the employee's health (the expense of which examination will be borne equally by the Company and the employee), shall be determinative of this issue. Any employee who fails or refuses to obtain the requisite certificate, or who fails or refuses to cooperate in these procedures, shall be subject to disciplinary action.

Finally, this labor contract binds Respondent, Petitioner and the IBEW to the arbitration of all disputes–

those arising directly out of interpretations of the labor contract *and* those arising generally out of an employee's belief that he has been "treated unjustly". The section of the grievance procedure setting out the scope of the disputes subject to arbitration reads:

(Article X, Section 3–App. 47a)

> 3. Should differences arise between the Company and any of its employees represented by the Union as to the meaning or application of any of the Articles in this Agreement, or if an employee believes he has been treated unjustly, the grievance shall be handled in the following manner. . . .

Petitioner's Complaint herein alleges that after his workers' compensation injury he was released by his private physician to return to work on November 12, 1984. App. 8a, paragraph 6. He further alleges that he was not allowed by Respondent to return to his job, and that he was ultimately terminated because (he believes) he had asserted rights under the state workers' compensation law. App. 8a, paragraphs 6, 9 & 10.[2]

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[2] Petitioner's Complaint does not allege what efforts he undertook to reclaim his job, nor does it disclose that Petitioner had a labor contract. Furthermore, Petitioner does not claim that his Union failed or refused to pursue his rights under that labor contract, or that the labor contract gave him less than a full opportunity to completely redress his claimed unjust discharge.

REASONS WHY THE CAUSE SHOULD NOT BE REVIEWED BY THIS COURT

I. THE DECISION BELOW ON REMOVAL JURISDICTION IS IN COMPLIANCE WITH DECISIONS OF THIS COURT.

The general removal principles established by this Court are straight forward: in order for a federal court to exercise federal question removal jurisdiction under 28 U.S.C. Section 1441, the plaintiff's well-pleaded complaint must raise issues of federal law, *Gulley v. First National Bank*, 299 U.S. 109, 113 (1936); the plaintiff is held to be the "master of his claim" and is entitled to avoid federal jurisdiction by strict reliance on state causes of action, *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913); a case may not be removed to federal court on the basis of a federal defense, even if the defense is preemption, if the complainant pleads mere state causes of action, *Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 12 (1983).

However, these general principles are not to be applied so as to defeat removal of a federal claim filed in state court– no matter how deft the pleading–when the essence of the claim is one which has been preempted by federal law. As this Court wrote in *Caterpillar Inc. v. Williams*, 482 U.S. ___, 107 S.Ct. 2425 (1987):

> On occasion, the Court has concluded that the pre-emptive force of a statute is so "extraordinary" that it "converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Metropolitan Life Insurance Co., supra*, at ___, 107 S.Ct., at 1547. Once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law. (footnote omitted).

107 S.Ct. at 2430.

Preemption cases under Section 301 of the Labor-Management Relations Act, 29 U.S.C. Section 185 (LMRA), have been the subject of a number of decisions on the right of removal. Efforts of unionized employees to litigate the right or wrong of their discharges in state courts under local tort or contract theories and *thereby circumvent the coverage of their labor contracts and federal law* have met with judicial disapproval. When a removal petition is filed, the federal courts strip away the camouflage of a state court claim if (as here) it is a device to mask a federal claim to reinstatement in employment which is granted and protected by a labor contract.

In *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968), this Court concluded that where "the heart of the complaint was a . . . clause in the collective bargaining agreement", the complaint arose under federal law. *Id.* at 558. The reasoning of *Avco* was applied in *Franchise Tax Board of Cal. v. Construction Laborer's Vacation Trust for Southern Cal., supra.*, in which this Court stated:

> . . . the pre-emptive force of §301 is so powerful as to displace entirely any state cause of action "for violation of contracts between an employer and a labor organization." Any such suit is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of §301. *Avco* stands for the proposition that if a federal cause of action completely preempts a state cause of action any complaint that comes within the scope of the federal cause of action necessarily "arises under" federal law. (footnote omitted).

463 U.S. at 23-24.

Accordingly, no state claim which veils a federal labor contract right, no matter how artfully pleaded, will be allowed by a federal court to abrogate the federal claim–the state claim must, in this instance, yield to the underlying federal cause for purposes of established federal jurisdiction.

This principle–recharacterizing and allowing removal of essentially federal claims disguised as state claims–was properly applied by the Seventh Circuit below. In addressing the removal issue, the Court first analyzed the basis for review of jurisdictional questions, concluding that whether the claim arose under federal law and was therefore removable was itself a federal question, and one which the court must independently determine. See *Lingle v. Norge Division of Magic Chef, Inc.*, 823 F.2d 1031, 1039 (7th Cir. 1987), cert. pending, No. 87-259. This assessment was proper and consistent with this Court's decision in *Standard Oil Company of California v. Johnson*, 316 U.S. 481, 483 (1942).

The Court then looked at the substantive nature of the cause of action in light of the "artful pleading" rule and concluded that the complaint asserted a claim for wrongful discharge which was subject to the applicable collective bargaining agreement.[3] *Lingle*, 823 F.2d at 1040. On the basis of *Avco*, the Seventh Circuit concluded that since the claim arose under the union contract, federal questions were raised and removal jurisdiction was proper.[4]

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[3] The artful pleading rule was approved by this Court as an interpretive guide to exposing the gist of a complaint in *Skelly Oil Company v. Phillips Petroleum Company*, 339 U.S. 667 (1950) and *Federated Department Stores v. Moitie*, 452 U.S. 394 (1981). It is referenced but not dispositive in *Caterpillar Inc. v. Williams*, *supra*. While this interpretive guide may be helpful to address removal issues, identification of the sum and substance of the underlying dispute may be a more instructive approach. See *Avco*, 390 U.S. at 558; *Franchise Tax Board*, 463 U.S. at 24; *Caterpillar Inc.*, 107 S.Ct. at 2430. In any event, the Court below reaches the correct conclusion on the removal issue.

[4] In order to establish removal jurisdiction, the Seventh Circuit suggests the necessity for a federal remedy. *Lingle*, 823 F.2d at 1042. Such a requirement was found unnecessary by this Court in *Caterpillar Inc. v. Williams*, 107 S.Ct. at 2429 n.4. However,

(Footnote continued on the following page)

The holding here by the Seventh Circuit that removal was proper is consistent with the recent decisions of this Court in *Caterpillar Inc. v. Williams, supra.*, and *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. ___, 107 S.Ct. 1542 (1987). In *Caterpillar*, while the Court ultimately concluded that the claims raised were not federal and therefore not subject to removal, the decision turned on the fact that the causes of action asserted by the plaintiffs were for breach of individual employment contracts not within the scope of Section 301. *Id.* at 107 S.Ct. 2431. In making its decision the Court was careful to restate as still good law the standards previously prescribed in *Avco* and *Franchise Tax Board.*

In *Metropolitan Life*, the Court relied heavily on the preemptive effect of Section 301 of the LMRA in finding that the plaintiff's complaint, which admittedly raised viable and independent causes of action under applicable state law, was to be "recharacterized" as a federal cause of action under Section 502(a)(1)(B) of ERISA. *Id.* at 107 S.Ct. 1547.

In this case, contrary to Petitioner's characterization, the gravamen of his action is a claimed right to continued employment. This claim does not derive independently from Illinois tort law. It is dependent upon, and inextricably interwoven with, the labor contract rights Willoughby and his co-workers have with Respondent.

Petitioner's Complaint plainly pleads for damages which arose as a result of Respondent's refusal to return him to his employment. He does not claim any injury resulting from an independent tort. Rather, he alleges that he was employed by Respondent (App. 7a, paragraph 1); that he received a physical injury while employed

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4 *(Continued)*

the inclusion of this unnecessary element by the appeals court does not change the result.

(App. 7a, paragraph 2); that he was authorized by his physician to return to work (App. 8a, paragraph 6); that he was denied reemployment by Respondent (App. 8a, paragraph 6); and that he was subsequently discharged (App. 8a, paragraph 9), all of which–if true–would constitute a clear breach of Article VIII, Section 15 and other provisions of his labor contract.

While this Court has phrased it in different ways, the determinative question as to removal is whether the sum and substance of the dispute between an employer and employee asserted in a state court complaint involves their labor contract[5]. If it does, Section 301 of the LMRA comes into play and the underlying claim is federal in nature. As Petitioner's essential claim for reemployment involves his labor contract, the petition for removal was properly granted.

II. 28 U.S.C. SECTION 1445(c) DOES NOT PRECLUDE REMOVAL.

Petitioner claims that Respondent is barred from seeking removal by 28 U.S.C. Section 1445(c) which prohibits removal of a state court action arising under the workers' compensation laws of that state. Petitioner admits that this issue does not independently justify review by this Court. Pet. 12. This is particularly true because his argument on this point is quite simply without merit.

In the first place, it is clear that by adopting Section 1445(c), Congress did not intend to deal with the issue

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[5]In *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), issues were deemed federal in nature if of the type "raised in suits of a kind covered by §301." *Id.* at 103. In *Avco*, the Court referenced "the heart of the complaint" as the basis for disposition. *Id.* 390 U.S. at 558. In *Franchise Tax Board*, the standard is stated as "any complaint that comes within the scope of the federal cause of action necessarily 'arises under' federal law." *Id.* 463 U.S. at 24.

of removal of purported state tort actions over employment discharges. Rather, Section 1445(c) was enacted to prevent removal of actions to recover benefits provided in state workers' compensation statutes such as medical expenses and statutory compensation for disability *because of work-related injury* – in other words, workers' compensation claims themselves. See S.Rep. No. 1830, 85th Cong., 2d Sess. 7-9, reprinted in 1958 U.S. Code Cong. & Admin. News 3099, 3106. Accordingly, Section 1445(c) by its terms only prohibits removal of claims for benefits that "arise under" the workers' compensation laws of a state–it does not prohibit removal of the type of claim alleged by Petitioner in this case.

Secondly, case law construing the scope of Section 1445(c) reflects an intent to strictly construe and limit its reach. In *Horton v. Liberty Mutual Insurance Company*, 367 U.S. 348 (1961), this Court held that Section 1445(c) was limited to its express terms, and that workers' compensation claims *which otherwise met the criteria for federal jurisdiction* could properly be filed in the federal courts. Likewise, in *Home Indemnity Company v. Moore*, 499 F.2d 1202 (1974), the Eighth Circuit Court of Appeals, in applying the *Horton* analysis, found that Section 1445(c) could not be applied to cases "beyond the scope of the plain wording of the statute." *Id.* at 1204. Consistent with this reasoning, other work-related tort claims have been found to be outside the purview of the applicable workers' compensation law and therefore subject to removal, even in the face of a Section 1445(c) objection. See *Kemp v. Utah Construction and Mining Company*, 225 F.Supp. 250, 253 (D.Or. 1963).

Thirdly, there is no conflict in the circuits on this issue, as Section 1445(c) has been interpreted with uniformity by those courts that have addressed it. The Seventh Circuit has ruled that Section 1445(c) does not preclude removal in this kind of case because the claim is not covered by the state workers' compensation laws, and also because the

claim is governed by Section 301 of the LMRA and therefore preempted in its entirety. *Vantine v. Elkhart Brass Manufacturing Company*, 762 F.2d 511 (7th Cir. 1985); *Lingle v. Norge Division of Magic Chef Inc., supra.* The Eighth Circuit reached the same conclusion by inference in upholding removal of a retaliatory discharge claim based on state workers' compensation laws in *Johnson v. Hussman Corporation*, 805 F.2d 795 (8th Cir. 1986). And in *Baldracchi v. Pratt & Whitney*, 814 F.2d 102 (2d Cir. 1987), pending before this Court as No. 87-318, the Second Circuit did not conclude that Section 1445(c) prevented removal. Rather, its ruling was that the underlying claim was not preempted by Section 301 of the LMRA.

Accordingly, established case law requires a strict reading of Section 1445(c), and is in keeping with the legislative history of that provision. Furthermore, no circuit courts have found this section applicable to the question of removal of the type of state tort claim alleged in Petitioner's Complaint. For these reasons, there is no reason for this Court to independently review this issue.

III. THE DECISION BELOW ON THE SUBSTANTIVE ISSUE OF PREEMPTION OF PETITIONER'S TORT CLAIM BY SECTION 301 OF THE LABOR-MANAGEMENT RELATIONS ACT IS IN COMPLIANCE WITH THE LAW ESTABLISHED BY THIS COURT.

* * *

SECTION 301 OF THE LABOR-MANAGEMENT RELATIONS ACT PREEMPTS A STATE COURT ACTION FOR RETALIATORY DISCHARGE OVER A WORKERS' COMPENSATION CLAIM WHERE THE PLAINTIFF IS AN EMPLOYEE REPRESENTED BY A UNION AND COVERED BY A COLLECTIVE BARGAINING CONTRACT WHICH HAS:

(1) SPECIFIC PROVISIONS GIVING RIGHTS TO EMPLOYEES AND THE EMPLOYER IN RELATION TO, AND GOVERNING DISCIPLINE FOR MISCONDUCT AS TO, CLAIMED WORKERS' COMPENSATION INJURIES; AND

(2) BINDING ARBITRATION FOR ALL CLAIMS THAT ANY EMPLOYEE "HAS BEEN TREATED UNJUSTLY".

In *Lingle v. Norge, supra.*, petition for cert. filed, No. 87-259, and *Baldracchi v. Pratt & Whitney supra.*, petition for cert. filed, No. 87-318, the issue of Section 301 preemption turns on whether the just cause discharge provision of a labor contract *implicitly* covers a claim of retaliatory discharge for asserting workers' compensation rights–a claim which is *explicitly* covered by state law. Various federal and state courts have not had unity of vision on this point. In striking a proper balance between federal and state interests in these cases of implied federal coverage and explicit state coverage, federal courts have struggled to see clearly whether the particular state claim

of a unionized employee has legitimate independence from the employee's labor contract.

Determining whether a particular state claim has such independence, or whether it necessarily involves a particular labor contract, may be at times a matter of perspective rather than analytical certainty. Some decisions, like *Lingle*, appear to stand for the proposition that every discharge of a unionized employee necessarily involves their labor contract. This may be because when both the federal and state systems provide a remedy for the claimed wrong of discharge from employment, the decision should turn on the predominant interest - here federal - and not on which system more specifically identifies the substantive matter. That approach appears most consistent with our constitutional federalism, but the focus is still slightly occluded when the implied labor contract coverage controls over express state law coverage.

However: this case is in sharp focus, and presents a clearer and stronger case for preemption when compared with either *Lingle* or *Baldracchi*. That is because the labor contract in this case *explicitly* covers workers' compensation-related matters between Respondent and its unionized employees such as Willoughby. The labor contract provides, for instance, that employees get their old job back after their recovery (Article VIII, Section 15). It further provides that Respondent can act on its physician's opinion as to an employee's condition after a workers' compensation injury (Article III, Section 6); that an impartial physician is to be chosen in the event of a dispute as to the employee's condition (Article III, Section 8); that an employee's failure to cooperate in the evaluation of his condition may be the basis for disciplinary action (Article III, Section 8); and that an employee who acts in a manner inconsistent with, or who misleads or misrepresents his condition is subject to disciplinary action (Article III, Section 7). Accordingly, any employee claim of retaliation for exercising workers' compensation rights inevitably involves

substantive, *explicit* terms of this labor contract.

The scope of the labor contract's grievance and arbitration provision is still another reason that this case presents a clearer case for preemption than *Lingle* or *Baldracchi*. This provision not only provides for arbitration of all disputes over interpretations of the contract, it provides for arbitration of *any* employee claim in which an employee "believes he has been treated unjustly" (Article X, Section 3). A claim of discharge in retaliation for exercising workers' compensation rights is *afortiori* a claim of being "treated unjustly," and cannot be conceptually disentangled from the specific language of the labor contract.

Accordingly, while this case was decided essentially under the same rationale as the Seventh Circuit's ruling in *Lingle*, the integrity of the decision below does not depend upon an affirmation of *Lingle*. Rather, this case presents a state court complaint and a particular labor contract which fit squarely within this Court's analysis in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985). In the language of *Allis-Chalmers*, the determinative questions are:

(1) whether the Petitioner's state-law action for retaliatory discharge is "inextricably intertwined with consideration of the terms of the labor contract" (*Id.* at 213);

(2) whether the state-law action is "rooted" in that contract (*Id.* at 220); and

(3) whether "resolution" of the action "is substantially dependent upon an analysis of the terms" of the contract (*Id.* at 220).

The language of Willoughby's labor contract compels an affirmative answer to all three questions:

(1) Since specific "terms of the labor contract" govern Petitioner's and Respondent's rights vis-a-vis each other concerning a workers' compensation claim, a complaint that Petitioner has been unlawfully treated with respect to such a claim "inextricably intertwines" those contract terms with the claim.

(2) Since the labor contract gives Petitioner substantive rights to return to his job upon recovery (and a right to arbitrate a refusal to reinstate), any claim that he has been discharged rather than permitted to exercise his right to return to work is "deeply rooted" in the contract.

(3) "Resolution of this claim is substantially dependent upon an analysis of the terms" of the labor contract since that contract specifies rights and obligations of both Petitioner and Respondent, and Petitioner's right to return (and not be discharged) depends on whether he has fulfilled his labor contract obligations.

Accordingly, as stated by this Court in footnote 13 of the *Allis-Chalmers* decision, "[f]or purposes of federal labor law, the [petitioner's state-law action] is not sufficiently independent of questions of contract interpretation to avoid the preemptive effect of Section §301." *Id.* at 218 n. 13.

Since the particulars of the Petitioner's Complaint and labor contract so clearly bring this case within the *Allis-Chalmers* rule, there is no reason for this Court to review the Seventh Circuit's decision.

CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari in this case should be denied.

Respectfully submitted,

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October 13, 1987

Attorneys for Respondent

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

GARY WILLOUGHBY,
Plaintiff,

v.

CENTRAL ILLINOIS LIGHT COMPANY,
Defendant.

Case No. 86-1002

PETITION FOR REMOVAL

Pursuant to 28 U.S.C. Sections 1441 and 1446, CENTRAL ILLINOIS LIGHT COMPANY petitions the Court as follows:

1. This action was filed on December 10, 1985, in the Circuit Court for the Tenth Judicial Circuit of Illinois, Peoria County, and is now pending in that court as Case No. 85 L 000749. The above-captioned Defendant is the only Defendant named in that action.

2. Defendant was served with process in the state court action on December 13, 1985, and 30 days have not yet expired since this action became removable to this Court.

3. Copies of all process, pleading and orders served on Defendant in the state court action are attached to this petition as Exhibit A.

4. Paragraphs 10 and 12 of the Complaint allege that Defendant tortiously discharged Plaintiff in purported violation of state law in retaliation for Plaintiff's filing of a workmen's compensation claim.

5. Defendant is an employer as defined by Section 2(2) of the National Labor Relations Act, 29 U.S.C. 152(2) and within the meaning of Section 301 of the Labor Management Relations Act, 29 U.S.C. 185.

6. The terms and conditions of Plaintiff's employment were, at all relevant times, governed by a collective bargaining agreement between Defendant and Local Union 51 of the International Brotherhood of Electrical Workers, relevant portions of which are attached hereto as Exhibit B.

7. Local Union 51 is a labor organization representing employees in an industry affecting commerce, as defined by Sections 2(5) and 2(7) of the National Labor Relations Act, 29 U.S.C. Sections 152(5) and 152(7) within the meaning of Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185.

8. The facts contained in paragraphs 5, 6, 7 and 8 of this Petition, although not set forth in the complaint, are properly presentable to this Court by way of this Petition in order for the Court to determine the removability of this action. *Oglesby* v. *RCA Corp.*, 752 F.2d 272 (7th Cir. 1982).

9. Plaintiff's rights to continued employment with Defendant was [sic] at all relevant times controlled exclusively by the applicable terms of the collective bargaining agreement referred to in Paragraph 6, notably Articles III, VIII, IX and X thereof. The resolution of Plaintiff's claims are, therefore, necessarily dependent upon interpretation of that agreement and a determination of whether Defendant violated the terms of the agreement. This action is, therefore, properly characterized as one arising under federal law giving this Court original jurisdiction pursuant to 28 U.S.C. Section 1331 and 29 U.S.C. Section 185. *See Allis-Chalmers Corp v. Lueck*, ___U.S.___, 105 S.Ct. 1904 (1985); *Vantine v. Elkhart Brass Manufacturing Co., Inc.*, 762 F.2d 511 (7th Cir. 1985), *Willie Reed v. WABCO, et al.*, USDC (C.D.Ill. No. 85-1238 and *Wendall Matthews v. WABCO, et al.*, USDC (C.D.Ill. No. 85-1239.

10. This Petition is accompanied by a bond with good and sufficient surety as required by 28 U.S.C. Section 1446(a) and Rule 2(b) of this Court.

WHEREFORE, Defendant asks that this action be removed from the Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, to this Court.

CENTRAL ILLINOIS LIGHT COMPANY

By: /s/ ROY G. DAVIS / J.R.R.
Roy G. Davis

/s/ JANET L. JANNUSCH
Janet L. Jannusch

/s/ WILLIAM KASLEY
William Kasley

Attorneys for Defendants [sic]

January 6, 1986

KECK, MAHIN & CATE
640 Peoria Savings Plaza
Peoria, IL 61602
(309) 673-1681
[CIL2/B:B.]

VERIFICATION

Janet L. Jannusch states on oath that she is one of the attorneys for the Defendant, that she has read the foregoing Petition for Removal, that the facts contained therein are true and correct to the best of her knowledge and belief, and that she is authorized to make this verification on behalf of the Defendant.

/s/ JANET L. JANNUSCH
Janet L. Jannusch

Subscribed and sworn to
before me this 6th day of
January, 1986.

/s/ REGINA WILLIAMS
Notary Public

EXHIBIT A

30 DAY SUMMONS

In the Name of the People of the State of Illinois, in the Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County.

GARY WILLOUGHBY,
Plaintiff,

v.

CENTRAL ILLINOIS LIGHT COMPANY,
Defendant.

Case No. 85 L 749

To: M.J. MURRAY
CENTRAL ILLINOIS LIGHT COMPANY
300 LIBERTY ST., PEORIA, IL 61602

TO EACH OF THE ABOVE-NAMED DEFENDANTS - You are hereby summoned and required to file a written answer in this case, or otherwise file your written entry of appearance, in the office of the Clerk of this Court, (located in Room 110, Court House, Peoria, Illinois) within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, a judgment or decree by default may be taken against you for the relief prayed in the complaint.

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

WITNESS, Leo E. Sullivan,
Clerk of said Court and Seal
thereof, at Peoria, Illinois, this 11
day of December, A.D. 1985.
LEO E. SULLIVAN **CLERK.**
By: TINA M. HIBBS **DEPUTY.**

Plaintiff's Attorney
(or plaintiff, if not represented by attorney)

BRIAN G. MEIERKORD, ATTORNEY AT LAW
ADDRESS: 1018 LEHMANN BLDG., PEORIA, IL 61602
TELEPHONE NO. (309) 673-1082

Date of Service _____ 19___
(To be inserted by officer on copy
left with defendant or other person.)

IN THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS

GARY WILLOUGHBY,
Plaintiff,

v.

CENTRAL ILLINOIS LIGHT COMPANY,
Defendant.

No. 85 L 000749

COMPLAINT

Now comes the Plaintiff, GARY WILLOUGHBY, by his attorney, BRIAN G. MEIERKORD, and complains of the Defendant, CENTRAL ILLINOIS LIGHT COMPANY, and for his cause of action states and alleges as follows:

1) That on January 17, 1984, and for a period of time prior to said date, the Plaintiff, GARY WILLOUGHBY, was employed by the Defendant, CENTRAL ILLINOIS LIGHT COMPANY, in the County of Peoria, State of Illinois.

2) That on January 17, 1984, the Plaintiff, GARY WILLOUGHBY, injured his back in the course of his employment for the Defendant, CENTRAL ILLINOIS LIGHT COMPANY

3) That the Defendant, CENTRAL ILLINOIS LIGHT COMPANY, is subject to the provisions of the Illinois Workers' Compensation Act by reasons of Ch. 48, Sec. 138.3 of the Illinois Revised Statutes.

4) That on January 30, 1984, the Plaintiff, GARY WILLOUGHBY, filed a written Report Of Occupational Injury or Illness with the Defendant, CENTRAL ILLINOIS LIGHT COMPANY, thereby electing to exercise his rights under the Illinois Workers' Compensation Act.

5) That on several subsequent occasions agents for the Defendant, CENTRAL ILLINOIS LIGHT COMPANY,

informed the Plaintiff that if he pursued his Workers' Compensation claim he would "pay the consequences".

6) That the Plaintiff, GARY WILLOUGHBY, was released for work by his personal doctor, effective November 12, 1984, but was not returned to work by the Defendant.

7) That on December 11, 1984 an agent of the Defendant informed the Plaintiff that if Plaintiff's physical condition remained unchanged, his employment with CENTRAL ILLINOIS LIGHT COMPANY would be terminated as of December 19, 1984.

8) That on December 19, 1984, and at all times prior thereto, the Plaintiff, GARY WILLOUGHBY, continued to elect to pursue his Workers' Compensation claim, and on December 24, 1984 filed an Application for Adjustment of Claim with the Industrial Commission of the State of Illinois.

9) That on or about December 19, 1984 the Defendant, CENTRAL ILLINOIS LIGHT COMPANY, terminated the Plaintiff's employment with the Defendant.

10) That the discharge of the Plaintiff by the Defendant was for no cause other than the fact that he had elected to and exercised his rights under the Illinois Workers' Compensation Act and had refused not to exercise those rights after Defendant's threats and intimidation.

11) That the purpose of the Illinois Workers' Compensation Act as set forth in Ch. 48, Sec. 138 of the Illinois Revised Statutes is to: "promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State, and without this State where the contract of employment is made within this State; providing for the enforcement and administering thereof, and a penalty for its violation . . . ."

12) That the Defendant, CENTRAL ILLINOIS LIGHT COMPANY, committed one or more of the following willful and wantan [sic] acts:

A. Discharged the Plaintiff, GARY WILLOUGHBY, for electing to exercise his rights under the Workers' Compensation Act.

B. Threatened to discharge Plaintiff, GARY WILLOUGHBY, unless he declined to pursue his rights under the Act in violation of Sec. 26 of the Act which prohibits anyone from refusing or failing to compensate injured parties in accordance with the provisions of the Act.

C. Discharged the Plaintiff, GARY WILLOUGHBY, after he refused to not exercise his rights under the Act in violation of Sec. 26 of the Act.

13) That Plaintiff, GARY WILLOUGHBY, was not guilty of any willful and wanton misconduct which was a proximate cause of his damage.

14) That as a result of the said willful and wanton misconduct of the Defendant, CENTRAL ILLINOIS LIGHT COMPANY, the Plaintiff, GARY WILLOUGHBY, had to seek employment out of the state and has lost earnings and suffered damages.

WHEREFORE, the Plaintiff, GARY WILLOUGHBY, requests that judgment be entered against the Defendant, CENTRAL ILLINOIS LIGHT COMPANY in an amount in excess of $15,000.00 plus costs of this suit, and that punitive damages in the amount of $2,000,000.00 be assessed against the Defendant.

GARY WILLOUGHBY
by his Attorney, BRIAN G. MEIERKORD

/s/ BRIAN G. MEIERKORD
BRIAN G. MEIERKORD

BRIAN G. MEIERKORD
Attorney for Plaintiff
1018 Lehmann Building
Peoria, Illinois 61602

EXHIBIT B

AGREEMENT

BETWEEN

Central Illinois Light Co.

AND

Local Union 51
International Brotherhood
of Electrical Workers

1983-1986

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AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of July, A.D., 1983, by and between the CENTRAL ILLINOIS LIGHT COMPANY, a corporation organized and existing under the laws of the State of Illinois, its assigns or successors, who may be hereinafter referred to as the "Company" and LOCAL UNION NO. 51 of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, affiliated with the American Federation of Labor, who may be hereinafter referred to as the "Union."

This Agreement shall become effective as of July 1, 1983, A.D., and shall remain in full force and effect until July 1, 1986 and thereafter from year to year unless either party gives the other written notice by mail, sixty (60) days before the expiration date of the Agreement, requesting that the Agreement be amended or cancelled; provided, however, in notice of amendment, if agreement is not reached as of July 1, the terms of this Agreement shall be extended sixty (60) days and if agreement is not reached on the amendments within this period, the Agreement may then be cancelled by either the Company or the Union by written notice to the other party. The sixty (60) day notice shall be accompanied by proposed amendments.

WITNESSETH:

ARTICLE I

1. This Agreement shall have effect in the areas of the Company known geographically as the Peoria Division, Suburban Division, and Springfield Division, and shall cover construction and maintenance work in the aforementioned Divisions (including electric transmission and distribution lines interconnecting said Divisions) performed by employees of the Company who are members of the Union.

2. It is agreed between the parties hereto that employees of the Company, in the bargaining unit, who are now

members of the Union, or any employees who become members thereafter, shall, as a condition of employment, maintain their membership in the Union for the duration of this Agreement. Any such employee, member of the Union, indebted to the Union in excess of three (3) months' dues, shall be suspended from employment by the Company on notification in writing by the Union. The Union will notify the Company at least five (5) working days prior to the date employee is to be suspended. New employees shall become members of the Union after thirty-one (31) days' employment, and shall continue such membership as a condition of employment for the duration of this Agreement.

3. The Company will deduct and remit monthly to the Union, dues required of such employees as certified by a duly authorized representative of the Union, provided such deduction is authorized in writing by the individual employee. Such deduction shall continue from year to year unless written notice of cancellation is given to the Union and the company during the month of June in each calendar year. The deduction authorization form shall be mutually agreed upon and provided by the Union.

4. It is expressly understood and agreed that the services to be performed by the employees covered by this Agreement pertain to and are essential to the operation of a public utility and to the welfare of the public dependent thereon, and in consideration thereof, and of the agreements and conditions herein by the Company to be kept and performed, the Union agrees that the employees covered by this Agreement will not be called upon or permitted to cease or abstain from the continuous performance of the duties pertaining to the positions held by them and under the Company, in accord with the terms of this Agreement, and the Company agrees on its part to do nothing to provoke interruption of or prevent such continuity of performance of said employees, insofar as such performance is required in the normal and usual operation of the

Company's property and that any difference that may arise between the above-mentioned parties shall be settled in the manner as later provided herein.

5. It is agreed between the parties hereto that they will continue their policies of not unlawfully discriminating against any employee because of his or her religion, race, color, sex or national origin. As used in this Agreement, personal nouns and pronouns shall cover both male and female employees.

ARTICLE II
DEPARTMENTS – CLASSIFICATION AND WAGE RATES

1. The schedule of wage rates attached hereto and made a part hereof as "Department – Classification and Wage Rates," are of the minimum rates for each classification coming within the scope of this Agreement.

2. All employees who work on regular scheduled shift work are to receive a shift bonus of forty-eight cents (48¢) per hour for the afternoon shift and forty-eight cents (48¢) per hour for the night shift. In cases where a shift worker's work period is extended beyond the regular eight (8) hour period, he will continue to receive the shift bonus of his regular shift. If the employee is rescheduled to work overtime on regular scheduled shift work, he will receive the appropriate shift bonus for that shift. Where overtime rates apply, the shift differential will be added to the base rate before calculating the applicable overtime.

2.1 Shift workers who are regularly scheduled to work on holidays as set forth in this Agreement shall receive one and one-half (1 1/2) times their basic wage rate plus the applicable bonus for the scheduled eight (8) hour shift and in addition are to receive eight (8) hours' holiday pay at their basic wage rate as provided for in the holiday clause of this Agreement. Vacation pay or other benefits of shift workers shall not include any shift bonus payments.

3. The wage rate for a new employee shall be that paid to present employees of the same qualifications.

4. The wage rate for an employee regularly employed and performing work under two or more classifications paying different wage rates shall be the weighted average of such rates.

5. The wage rate for an employee temporarily performing work under two (2) or more classifications shall be the rate of the position paying the highest rate.

6. The ratio of apprentices and/or helpers to journeymen, except by mutual agreement, may be one (1) apprentice to each five (5) journeymen in departments where the services of apprentices are applied, and the ratio of cable splicer helpers to journeymen cable splicers may be one (1) helper to each journeyman cable splicer. It is further agreed that one (1) apprentice cable splicer may be employed in each Underground Department.

7. Employees assigned to lineman apprenticeship classifications will be trained to meet the service requirements of the Company. They will spend sufficient time assigned to line work to qualify.

8. First and second year Apprentice Linemen or Electricians shall not be allowed to work on live lines or equipment of 480 volts or over, but apprentices having two (2) or more years' service may work on live lines or equipment of 480 volts or over providing they are assisting a journeyman lineman or electrician in performing such work.

9. It is agreed the Company will establish a three (3) year apprenticeship program in the Gas Street and Gas Service Departments. Gas Apprentice examinations both written and oral will be held in the presence of the Gas Department union steward, a qualified gas journeyman acceptable to the Union and the Company and management personnel. Examinations will be given on Company time. After passing the journeyman's examination, the

employee will be assigned journeyman's duties. Classroom work which may be a part of apprenticeship training will be on Company time.

10. The wage rates for apprentice classifications listed in the Classification and Wage Rates schedule are based on a percentage of the journeyman's rate as follows:

4-Year Apprenticeship Classifications

Fourth year apprenticeship	90% of journeyman's rate
Third year apprenticeship	85% of journeyman's rate
Second year apprenticeship	80% of journeyman's rate
First year apprenticeship	76% of journeyman's rate

3-Year Apprenticeship Classifications

Third year apprenticeship	90% of journeyman's rate
Second year apprenticeship	85% of journeyman's rate
First year apprenticeship	80% of journeyman's rate

2-Year Apprenticeship Classifications

Second year apprenticeship	87% of journeyman's rate
First year apprenticeship	80% of journeyman's rate

11. When working on live lines or equipment over 480 volts, it shall be the general practice to have two (2) linemen or two (2) electricians working together.

12. The vacation pay, holiday pay, sick pay, jury duty pay, funeral leave pay and compensable injury pay for meter readers receiving bonus shall be computed on the average hourly straight time earnings, including bonus, for the six (6) months immediately prior to the absence period.

ARTICLE III
SICK BENEFIT

1. When a regular (not part-time or temporary) hourly employee is unable to work for a period of three (3) consecutive working days on account of illness, exclusive of illness or disability due to occupational accidents, he shall receive sick benefits at the rate of ninety-five percent (95%) of his basic rate of pay for forty (40) hours per week, up to a maximum of two hundred twenty (220) work days whether within a single calendar year or during periods encompassing more than a single calendar year if the inability to work arises from out of or in connection with a single, common or related illness, accident or event. Employees who have ten (10) or more years of service may qualify for an additional one hundred ten (110) work days at seventy percent (70%) of their basic pay for forty (40) hours per week.

Sick benefits will not be allowed, in any case, for the first three (3) working days of such illness excepting that in case an illness extends seven (7) or more consecutive working days the three (3) day waiting period shall then be included in the sick benefit payments.

Beginning with the sixth month of disability an employee will make application of disability with the Federal Social Security Administration. Evidence of the application must be submitted to the Company no later than the first day of the seventh month of disability. Failure to submit proof of application will result in the discontinuance of any further sick pay benefits. If and when the employee qualifies for Social Security disability, the Company will make up the difference up to one hundred percent (100%) of his base rate of pay for forty (40) hour per week on and after the date he qualifies during the first two hundred twenty (220) days of disability and seventy percent (70%) of base pay during the one hundred ten (110) day period. If the employee qualifies for Social Security on a retroac-

tive basis, the Company will recoup from the employee any amount in excess of one hundred percent (100%) of base pay during the first two hundred twenty (220) day period and seventy percent (70%) of base pay during the one hundred ten (110) day period.

An employee will be eligible for another period of disability for the same single, common or related illness, accident or event after being released by a physician and performs his normal full-time duties (light duty excluded), for a period of thirty (30) working days. In calculating the said thirty (30) working day period, the employee must actually return to work, and time such as vacation period, holidays, and any other absence from work (whether excused or not) will not count in computing the required thirty (30) working days of regular full-time duties required before an employee is eligible for another period of disability as herein set forth. If an employee is allowed to return to work on a light-duty basis and remains on that light-duty work for six (6) months, he will be eligible for another period of disability for the same single, common or related illness, accident or event. In calculating the said six (6) month period, the employee must actually return to work, and time such as vacation period, holidays, and any other absence from work (whether excused or not) will not count in computing the required six (6) months of light-duty work required before an employee is eligible for another period of disability as herein set forth.

2. Employees must complete six (6) months' service before being eligible for sick benefits. Sick benefits will not accumulate from year to year. Sick benefits will only be allowed for alcoholism, drug abuse, and emotional disorders if the employee adopts such remedial measures as may be commensurate with his condition, and permits such reasonable examinations and inquires by the Company representative, as, in the judgment of the company, may be nec-

essary to ascertain the employee's condition. Sick leave benefits will not be paid if the illness or disability results from self-employment or employment outside of the Company. Employees shall furnish a certificate from an accredited physician showing incapacity to work, if the sickness or disability extends beyond three (3) working days.

3. Employees must complete application for sick pay benefits and furnish the Company with medical certification that they are unable to work before any sick benefit payments are made. Employees on extended sick leave must recertify their disability every thirty (30) days. The Company and the Union have agreed on the forms to be used for such certification.

4. Sick benefits accruing to an employee may be revised, or entirely eliminated, if, upon an impartial examination, it is found that the employee in question is abusing this sick benefit plan.

5. Any employee claiming payment for benefits or paid time not time worked (whether for sick benefits or any other type of benefits or paid time not worked) when such absence is obtained, excused or permitted under conditions evidencing fraud, deceit, misrepresentation, or otherwise obtained by an intentionally misleading or false representation, shall be subject to disciplinary action, including discharge.

6. Effective July 1, 1984, employees who are off work or injured while working for the Company and are eligible for Workmen's Compensation for temporary total incapacity for work in accordance with Workmen's Compensation Act, Section 8, shall receive from the Company the difference between the weekly compensation rate for temporary total disability and their basic rate of pay for forty (40) hours per week (gross pay less FICA, Federal, and State Withholding Taxes).

In no case during the disability period will an employee receive less or more than his normal basic take-

home pay that he was receiving prior to the injury. All authorized deductions, e.g. savings plan, union dues, insurances, etc. will continue to be withheld from the employee's disability pay on the same basis as prior to the injury. Company contributions for the Employees' Savings Plan and ESOP will continue on the same basis as prior to the injury. For withholding tax purposes during the disability period, exemptions claimed by the employee will be limited to the number of his legally eligible exemptions.

Such disability payments are to continue until the Company physician releases the employee to return to work or until such time the physician renders the employee wholly and permanently incapable of work.

7. Any employee unable to work for the Company due to illness or accident who is discovered to be employed whether for himself or by another, or who is otherwise acting in a manner inconsistent with the claimed physical ailment, or who is acting in a manner which demonstrated an act of fraud, misleading or misrepresentation, shall be subject to disciplinary action.

8. The Company reserves the right to seek an additional medical opinion at the Company's cost and expense by means of a physical examination, or otherwise by an accredited physician of the Company's own choosing. If a disagreement arises as to the opinions as to the employee's state of health, an impartial examination made by a physician chosen by the two physicians who have a disagreement concerning the employee's health (the expense of which examination will be borne equally by the Company and the employee), shall be determinative of this issue. Any employee who fails or refuses to obtain the requisite certificate, or who fails or refuses to cooperate in these procedures, shall be subject to disciplinary action.

ARTICLE IV
VACATIONS

1. Regular employees covered under this Agreement shall be entitled to a vacation with pay each year based on the following length of service at a time approved by the Company.

(a) Employees who have completed at least one (1) year but less than two (2) years of continuous service with the Company shall be entitled to a vacation of five (5) workdays or forty (40) hours.

(b) Employees who have completed at least two (2) years but less than eight (8) years of continuous service with the Company shall be entitled to a vacation of ten (10) workdays or eighty (80) hours.

(c) Employees who have completed at least eight (8) but less than fifteen (15) years of continuous service with the Company shall be entitled to a vacation of fifteen (15) workdays or one hundred twenty (120) hours.

(d) Employees who have completed at least fifteen (15) but less than twenty-three (23) years of continuous service with the Company shall be entitled to a vacation of twenty (20) workdays or one hundred sixty (160) hours.

(e) Employees who have completed at least twenty-three (23) but less than twenty-eight (28) years of continuous service with the Company shall be entitled to a vacation of twenty-five (25) workdays or two hundred (200) hours.

(f) Employees who have completed twenty-eight (28) or more years of continuous service with the Company shall be entitled to a vacation of thirty (30) workdays or two hundred forty (240) hours.

(g) One (1) additional week's vacation (five (5) days, forty (40) hours) will be granted to employees with

thirty-five (35) or more years of service during the calendar year in which that employee retires. Employees eligible under this provision must actually take this week of vacation before they retire.

1.2 Employees who are receiving sick pay benefits as provided for under Article III of this Agreement having unused vacation and are not expected to be released to return to work soon enough to take their earned vacation for that year, will be taken off of sick leave and placed on vaction the number of days equivalent to their unused vacation. In those cases where employees are placed on vacation their total eligible sick benefit days for which they are eligible under Article III will extend their sick pay eligibility an equal amount of time.

Should an employee become disabled during the month of November or December and have vacation scheduled during these two (2) months and is unable to take such vacation due to being on sick leave (as provided for under Article III of this Agreement, including time missed from work by reason of an injury covered by the Workmen's Compensation Act), during his regularly scheduled period of vacation, then and only then, the employee will be permitted to carry over his vacation period to the next following calendar year provided that:

(i) the employee must take his vacation at the time he is released by his physician before returning to work, or in the alternative, the employee may be permitted at the employee's option to receive pay in lieu of the said "carried-over" vacation period when the employee is released to return to work by his physician, all in accordance with Article III of this Agreement.

(ii) employees who become disabled during the month of November or December, have scheduled vacation during these two months and who do not return to work will be required to take the vacation time off after their sick benefits expire.

In no case will employees who retire on disability or who terminate their employment because of a disability earn vacation for that portion of the calendar year in which they did not physically work and were being paid sick pay benefits.

1.3 When an employee has a service anniversary date (other than his first) which qualifies him for additional vacation, he may schedule that additional vacation time at any time during the vacation year in which that anniversary date occurs, subject to the other provisions of this Article.

2. When a regular employee leaves the Company, the vacation allowance to which he may be entitled shall be consistent with the above provisions, and provided he has not already taken the vacation for which he is eligible during the current calendar year, he shall be paid his vacation allowance as of the date of his termination of service with the Company. In the event a regular employee terminates his employment solely because of layoff, death or retirement under the Company's pension plan, pro rata vacation pay earned the calendar year of termination to the date of such layoff, death or retirement will be paid.

3. Vacations shall be taken at increments of at least five(5) working days except as to those employees eligible for three (3) or more weeks of vacation.

Employees eligible for three (3) weeks of vacation will be allowed to take one (1) week (five (5) workdays) one (1) day or more at a time.

Employees eligible for four (4), five (5), or six (6) weeks of vacation may schedule an additional week (five (5) workdays), of vacation one (1) day or more at a time. This will allow employees with four (4), five (5), or six (6) weeks of vacation a total of two (2) weeks (ten (10) workdays), of vacation to be scheduled one (1) day or more at a time. The vacation days referred to in this paragraph must be scheduled in advance and must be in accordance with all other

provisions of this Agreement. The needs of the Company to provide service will be a valid reason to deny requests to schedule vacation one (1) or more days at a time. These days must be scheduled or utilized before December 1 each year.

3.1 Other than as provided for in Paragraph 1.2 and Paragraph 5 of this Article, vacations shall not accumulate from year to year. In determining vacation schedules the wishes of the employee will be considered as to the time of taking his vacation, insofar as the needs of the service will permit.

4. All absences from work for authorized leaves of absence, or layoffs in any vacation year, shall be deducted in determining vacation allowances and years of service.

5. In the event of death in the employee's immediate family, as outlined in Article VIII, Paragraphs 13 and 13.1, while the employee is on vacation, he may reschedule up to three (3) days of his vacation. The number of days he may reschedule shall be in accordance with the provisions of Article VIII, Paragraphs 13 and 13.1 of this Agreement. In the event that these rescheduled days would fall into a new calendar year, they must be scheduled and taken during the first working days of the new calendar year, provided it can be scheduled by the Company.

6. In case a holiday, within the meaning of this Agreement, occurs on an employee's basic workday during his scheduled vacation period, an additional day off shall be allowed for such holiday.

7. Vacation pay and sick benefits shall not run concurrently.

ARTICLE V
HOURS OF WORK

1. Eight (8) hours shall constitute a regular day's work and five (5) consecutive days, beginning Monday morning and terminating Friday evening, shall constitute

a regular week's work for all employees covered herein, except as otherwise provided in this Agreement.

2. Eight (8) hours shall constitute a regular day's work and five (5) consecutive days shall constitute a regular week's work for Service Crews, Monday to Friday, inclusive, and/or from Tuesday to Saturday, inclusive; the employees and/or crews to be assigned to, or alternated, shall be mutually agreed upon by the parties hereto; employees are to report at headquarters and be returned to headquarters, except as otherwise provided herein.

3. Regular daytime working hours from March 1st of one calendar year to December 1st, of the same calendar year, except as otherwise provided, shall be from 8:00 a.m. to 4:00 p.m. with a twenty (20) minute lunch period taken on Company time. Employees will not be returned to headquarters for lunch during this period.

The Company agrees that it will not present any proposal to include December, January, or February in this provision for seven (7) years beginning July 1, 1980.

3.1 Regular daytime working hours from December 1st of one calendar year to March 1st, of the subsequent calendar year, except as otherwise provided, shall be from 8:00 a.m. to 4:30 p.m., with one-half (1/2) hour lunch period. The one-half (1/2) hour lunch period specified above between December 1st and March 1st will apply to all departments and divisions unless otherwise mutually agreed upon. Employees will report to headquarters, to the nearest town or where eating facilities are available if they are working within five (5) miles of such locations; and if weather is bad, the foreman or department head shall arrange for a warm place to store and eat lunch or shall arrange for meals at Company expense. If crews are going to be working more than five (5) miles from the locations mentioned above, they are, except in an emergency, to be notified not later than their normal quitting time if they are to carry lunches; and in such an instance, the crew

would not be returned to such locations mentioned above.

3.2 It is understood that Paragraphs 3 and 3.1 of this Article V do not apply to employees holding meter reader classifications.

4. Employees in the Garage on the day shift may be scheduled to start work any time between 7:00 a.m. and 8:00 a.m., or at such other time it is mutually agreed upon. Employees assigned to the day shift in the Storerooms may be scheduled to start work any time between 5:00 a.m. and 9:00 a.m. The practice of assigning employees on shifts in these departments will continue as in the past. Employees in these departments may be scheduled to work any five (5) consecutive days, Monday through Saturday.

5. Employees classified and performing trouble and complaint work shall be journeymen of the proper classification and may be used on regular construction and maintenance work when required, and the regular working day for these employees shall be any consecutive eight (8) hours per day, five (5) consecutive days per week, Saturdays, Sundays, and holidays included.

6. When necessary, the Company may establish a second shift any five consecutive days Monday through Friday in the Gas Meter and Electric Meter Departments, with the further understanding that:

(a) Employees will be given five (5) calendar days' notice prior to assignment to the second shift, except as provided in paragraph (b) following.

(b) At least two (2) journeymen will be assigned to work any shift, however, should illness or other unforseen absence of a scheduled journeyman occur, no violation of this provision will be constituted. In this event, a substitute journeyman may be assigned with twenty-four (24) hours' notice.

(c) Only journeymen will be allowed or required to work the second shift.

(d) Assignment to a second shift will only be initiated when the shop backlog of electric meters to be tested exceeds 1,000 single phase or 100 polyphase meters. In the gas meter shop, it will only be initiated when the shop back log of residential meters to be tested exceeds 500 or large commercial/industrial meters exceeds 50.

(e) Assignment to the second shift will be done by seeking volunteers with seniority prevailing in selection for the shift work; if insufficient volunteers are available, the Company will assign from journeymen in the department in inverse seniority order.

7. When the Company decides it is necessary to operate the propane plants on a seven (7) day per week, twenty-four (24) hour per day schedule, the existing schedule agreed upon will be used. This schedule was agreed upon by an exchange of letters on June 26, 1973.

8. It is agreed to allow employees to select their crew assignment to operate the propane plants on the basis of seniority, and it is also agreed that if no one selects such assignments, the Company will fill the positions with an employee with the least seniority who is qualified. The schedule for these selections will cover an eight (8) week period.

9. The scheduled work week for employees assigned to propane plant operations will be Monday, 12:01 a.m., through Sunday, 12:00 midnight. Apprentices can be scheduled as a member of a propane operating crew for an eight (8) week period during the second year of his apprenticeship and for an eight (8) week period during the third year of his apprenticeship. He will be scheduled on the day shift for at least one (1) week for his initial breaking in on propane plant operations.

10. Those employees whose two (2) days of rest fall between Tuesday and Saturday, both inclusive, the first

day of rest shall be considered as "Saturday" and the second day of rest as "Sunday," and if called to work on such days, they shall receive the applicable overtime rates of pay. When an employee's first day of rest falls on a Sunday, his second day of rest shall be considered as a "Saturday."

11. All work performed in excess of a regular day's work or a regular week's work, less any intervening holiday, or excused absence, except as otherwise provided in this Agreement, shall be paid for at the rate of time and one-half (1 1/2), except Sundays which shall be paid for at double time (2x) and employees shall not be required to take off time during the regular working day for overtime worked, or to be worked.

12. As far as practicable, overtime shall be distributed equally among employees in each occupational group, taking into account the qualifications required and the availability of the employees.

13. Employees who are scheduled to work on a calendar Sunday as a basic workday shall receive, in addition, fifty percent (50%) of their basic hourly rates of pay for the hours worked during such basic workday.

ARTICLE VI
HOLIDAYS

1. Hourly-paid employees other than temporary or part-time (except as provided for in Paragraph 1.1) whose services are not required on New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, the day before Christmas, Christmas Day, and the day before New Year's Day, or the day celebrated for the foregoing, are to receive eight (8) hours' pay at their regular straight time basic rate provided:

(a) The employee works his full scheduled workday before and after the holiday.

(b) If the employee is absent on his scheduled work-

day either before or after the holiday (but not both) the employee may be entitled to holiday pay if otherwise qualified, provided the employee is able to show that the full day's absence resulted from urgent circumstances beyond his control, and that except for the holiday he would have been able to work on that day.

(c) When an employee is sick during a period where there is an intervening holiday, he will not be considered absent for this purpose and, therefore, will receive his regular holiday pay provided he works his last scheduled workday before such sick period. Holiday pay and sick pay shall not run concurrently.

1.1 employees designated as temporary employees scheduled to work forty (40) hours per week, who have been employed six (6) or more consecutive months, will be eligible for holiday pay in accordance with the holiday pay provisions.

2. Hourly-paid employees other than temporary or part-time are to be credited with eight (8) hours' holiday pay at their regular rate if so excused, provided, that if work is scheduled on a holiday and employee is requested to report for work and does not do so, said employee shall forfeit his pay for the holiday.

3. When a holiday under this Agreement falls on a Saturday, the previous Friday shall be celebrated as the holiday; and when a holiday falls on a Sunday, the following Monday shall be celebrated as the holiday. The day before Christmas Day and the day before New Year's Day will be celebrated on the last regularly scheduled workday before the day on which Christmas Day and New Year's Day is celebrated as a holiday.

4. Hourly-paid employees other than temporary or part-time who work on New Year's Day, Washington's

Birthday, Good Friday, Decoration Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, the day before Christmas, Christmas Day, the day before New Year's or the days celebrated for the foregoing, shall be entitled to such holiday pay, and, in addition, shall receive one and one-half (1 1/2) times their straight time rate for time worked within the period of their regular scheduled work hours, and pay at double the straight time rate for time worked in excess of eight (8) hours on such holidays.

5. Nothing herein shall be construed as requiring or permitting pyramiding of overtime rates.

ARTICLE VII
CONDITIONS OF WORK

1. In case the Company should contract any of the work covered in this Agreement, except certain gas and steam heat work, which, shall be done as in the past, the work shall be done by a contractor who recognizes the International Brotherhood of Electrical Workers as the collective bargaining agent for his employees.

2. The Company agrees to provide forty (40) hours per week employment (unless interrupted by holidays) to each employee who has established seniority with the Company, provided the employee is ready and in condition to perform the work in accordance with the terms and provisions of this Agreement.

2.1 Employees shall not be required to work out of doors during rainy or inclement weather unless such work is necessary to protect life or property, maintain service to the public, or perform other essential work.

2.2 Electric line crews, electric underground crews, electric substation crews, gas street crews, and forestry crews shall not be dispatched to perform regular duties at a time when the temperature is below +10 degrees Fahrenheit, except that substation crews may be dispatched and

assigned to indoor substation work, and electric underground crews may be dispatched and assigned to certain underground vault work. The official temperature as reported to the Company by the following sources will be conclusive as to the temperature at any given time: the U.S. Weather Bureau at the Peoria Airport for crews whose headquarters locations are in the Peoria Division and the Suburban Division, the U.S. Weather Bureau at the Springfield Airport for crews whose headquarter locations are in Lincoln and Springfield, and the U.S. Weather Bureau at the Champaign Airport for crews whose headquarter locations are in Tuscola and Homer. Should the temperature drop after a crew mentioned in this paragraph has been dispatched, an official report will be obtained by the Company during the noon lunch period on the day involved and if the temperature has then dropped below +10 degrees Fahrenheit the crew will then be assigned to shelter.

2.3 During periods when the crews outlined in 2.2 of this Article are unable to perform their regular duties, the company may assign work outside their classification which can be performed under shelter. When performing work of such nature, the employee shall receive the rate of pay for his regular classification.

2.4 The Company will continue to administer the present "inclement weather practices" for employees who are assigned to meter reading, indoor substation work, trouble or complaint work, gas service route work, gas regulator work, underground vault work, meter work, and/or for all other employees in the bargaining unit regularly assigned to work singly or in pairs.

3. It is agreed that management must make judgments and determinations within the framework of the provisions of this Article VII and employees are expected to follow such instructions as are given. If there is disagreement on such matters, employees may take the matter up

through the grievance procedure, provided, however, that no grievance shall be filed or processed if the grievance is based on or involves in part, or in whole, "temperature" and at the time the employee was dispatched on the day involved, the temperature as reported to the Company in accordance with the foregoing was +10 degrees Fahrenheit or above.

4. The foregoing is not to be interpreted to mean that the Company does not have the right to lay off employees on account of the needs of its service. Notice of layoff shall be given to the Union in accordance with Article VIII, Paragraph 8 (E). Employees shall notify the Company two (2) weeks prior to their leaving the Company. It is understood that in those instances where it is not possible for the employee to give the Company two (2) weeks' notice before leaving that all possible notice will be given. This paragraph shall not apply to additional miscellaneous unskilled help required from time to time.

ARTICLE VIII
SENIORITY

1. "Seniority" as used herein is defined as the right accruing to employees through length of service with the Company after twelve (12) consecutive months of employment in the properties of the Company on work covered hereby, shall entitle them to the preferences provided for in this Agreement. All new employees shall be considered as probationary employees for the first twelve (12) months of their employment, and the Company shall have the exclusive right to transfer or discharge them at any time during this period. Employees who are continued in the employ of the Company after said probationary period shall be credited with twelve (12) months' seniority.

2. The term "classification seniority" as used herein is defined as meaning the length of employment in similar classified occupations within two geographical areas of the Company. The first geographical area will be titled "Peoria

Division, Suburban Division and Lincoln Storage Field". The second geographical area will be the "Springfield Division".

3. Promotions shall be based on classification seniority, ability, and qualifications; ability and qualifications being sufficient, classification seniority shall prevail. When an employee declines a promotion, it shall not prevent him from accepting a future promotion.

4. The seniority of a journeyman who has reached the journeyman classification through apprenticeship with the Company shall begin on the date he began his apprenticeship. A journeyman's seniority shall include all the time served as a crew leader or temporary foreman.

5. Any employee who may be transferred from one classification to another shall continue to accumulate seniority in the classification from which he was transferred for a period of six (six) months.

6. At the end of six (6) months, he shall date his seniority in his new classification from the date of transfer. He shall also retain the seniority which he had before transfer in his former classification. The seniority in his previous classification shall become inactive except as provided for in a layoff.

7. When it becomes necessary to lay off employees because of lack of work, the Company will first apply journeyman classification seniority and then total bargaining unit seniority for non-journeyman positions. For purposes of layoff, journeyman classification seniority shall include all time spent as an apprentice in that respective classification. In those classifications where there are no apprenticeship programs, time spent as a helper in that specific line of progression will count as journeyman classification seniority. Any employee movement as a result of layoff must be based on qualifications being sufficient and provided employees are physically qualified. According to these guidelines, the following procedures will apply:

A. The employee(s) with the least journeyman classification seniority in the affected department will be reassigned to replace employee(s) with the least seniority in the same journeyman classification in their respective geographicai area of the Company, as defined in Article VIII, Paragraph 2.

B. If these employee(s) do not have enough journeyman classification seniority to achieve the preceding, but have worked in other journeyman classifications, the employee(s) may exercise the amount of seniority acquired within each journeyman classification to which they were previously assigned to replace employees with the least journeyman classification seniority in that respective classification and geographical area.

C. After following Steps A and B, any employee that cannot exercise journeyman classification seniority will then use his total bargaining unit seniority to replace the least senior non-journeyman employee in the bargaining unit in their respective geographical area.

D. Any employee that does not have enough seniority to be reassigned according to the above procedures will be laid off.

E. The Company shall give the Union two (2) weeks' notice prior to laying off employees and all employee movements relative to this layoff will be completed in this two(2) week period.

8. Employees or former employees if available, qualifications being sufficient and provided they are physically qualified to return to work, shall be eligible for recall in accordance with the seniority provisions, if because of lack of work they were demoted or transferred within the classification or laid off during the immediately preceding two (2) year period.

9. When an employee is promoted, demoted or transferred from the classification in which he is regularly employed to another classification outside the bargaining unit, his seniority will continue to accumulate in his former classification during the promotion, demotion, or transfer provided the employee thus affected continues his membership in good standing in the Union during the period of promotion, demotion, or transfer.

10. Employees of the Company who may be called upon to transact business of the Union which requires their absence from duty with the Company shall upon application of twenty-four (24) hours' notice and with permission from their supervisor or department head be allowed to absent themselves without pay for sufficient time to transact such business.

11. It is further agreed that any employee of the Company who may be elected or appointed to office in the union that will require him to absent himself from duty to the Company shall at the expiration of term of office be reinstated to his former position including all of his seniority rights as of the date of leaving the service of the Company providing that he is then physically qualified to return to work. It is agreed that in case of the return of such an employee, other bargaining unit employees will consent to such demotions as are necessary to make room for him.

12. Employees who serve on jury duty or subpoenaed to appear in court as a witness shall be entitled to the difference between pay received for such duty and their straight time basic wage for the period served, upon presentation of proper credentials. In order to qualify, an employee engaged in such jury duty or witness service, shall be expected to report to regular duty, if possible while temporarily excused from such jury duty.

12.1 If an employee described in Paragraph 12 hereof is a shift worker, and is working night or afternoon shift work when called to jury duty or subpoenaed to appear

in court as a witness, he will be rescheduled to the day shift provided that he must give the Company at least forty-eight (48) hours' notice that he has been so called to jury duty or so subpoenaed. His replacement will be made through voluntary methods or the least senior employee will be assigned.

13. In case of death in a regular employee's immediate family, the employee shall, upon request, be granted a leave of absence with no loss of pay for time off during regularly scheduled work hours up to a maximum of three (3) workdays, ending with the day of the funeral; except in those cases where the employee must travel, must transact business or legal matters in connection with the deceased relative's funeral, he may schedule himself to be off the day after the funeral as the third day. The employee's immediate family is understood to include the following: father, mother, sister, brother, spouse, son, daughter, son-in-law, daughter-in-law, father-in-law, mother-in-law, stepmother, stepfather, stepson, stepdaughter, and only such other relatives of the employee or spouse who were resident members of the employee's household at the time of death. In case of death of a grandparent, grandchild, brother-in-law, sister-in-law, stepbrother or stepsister of the employee or the spouse, the employee shall, upon request, be granted a leave of absence with no loss of pay for the day of the funeral. When an employee is requested by the family to serve as a pallbearer (does not include honorary pallbearers) for a deceased employee or a retired employee, he shall upon request be granted a leave of absence with no loss of pay for time off during regularly scheduled work hours up to a maximum of eight (8) hours of straight time pay.

13.1 In order for an employee to obtain any time off from work under the provisions of Paragraph 13 of this Article VIII, the employee must actually attend the funeral of the deceased individual, provided, however, that if after

the employee has expressed to the Company his intent to attend the funeral and the employee has planned to attend the funeral and circumstances beyond the control of the employee thereafter prevented his attendance at the funeral, then funeral leave and pay will be permitted as provided for in Paragraph 13 of this Article.

14. A maximum of sixty (60) days leave of absence may be granted to employees for reasons other than illness and recuperation therefrom with the written approval of the department head provided that they can be spared from duty. Such leave of absence may be extended to six (6) months with the written approval of the Vice President in charge of the area, and while on such leave of absence, employees shall not be deemed to have forfeited their seniority rights. In case of absence of over sixty (60) days employees shall be permitted to return to work only if they are physically qualified to do so. If employees remain away for more than the granted term of leave of absence or if they accept employment elsewhere without the sanction of the Company, their employment with the Company shall be deemed to have terminated. Where leaves of absences are granted, the Union shall be notified by letter.

15. Any employee of the Company covered by this Agreement who is injured while on duty shall be entitled upon recovery to former position with full seniority rights provided he is physically qualified to return to work. It is understood that in the case of the return of such an employee, other bargaining unit employees will consent to such demotions as are necessary to make room for him.

16. All time off duty due to leave of absence in any calendar year shall be deducted in determining seniority and years of service.

17. Seniority shall be deemed to have been broken for the following reasons:

(a) If the employee quits.

(b) If the employee is discharged.

(c) If the employee who has been laid off fails to return to work within fifteen (15) days after being properly notified to report to work

(d) If he is laid off for twenty-four (24) consecutive months. However, if his seniority exceeds twenty-four (24) months, he shall not lose his seniority unless he is laid off for a consecutive period equal to the seniority he had acquired at the time of such layoff, but not in excess of three (3) years.

18. When a vacancy in any other job classification covered by this Agreement (other than crew leader or supervisor) is not filled by transferring employees from an area which has a reduced workload, or filled through regular lines of promotion, or filled by employees with physical handicaps, the Company shall post a notice on the bulletin board in the department affected for a period of three (3) working days and at the same time post in the areas and Division. Employees in the department where the vacancy exists will be given first priority in consideration; area next consideration; and Division final consideration. (Consideration means interviewing the employee.) The posting shall announce the position open and to whom employees shall make written application. Areas are defined as follows: Peoria, Springfield, Pekin, Lacon, Eastern District, Western District, Lincoln, and Tuscola. Divisions are defined as Peoria, Springfield, or Suburban.

18.1 Employees in the bargaining unit will be allowed to bid job vacancies after they have been in the bargaining unit for six (6) calendar months.

18.2 The Company will have the sole right to establish job qualifications. The Company will consider the ability and qualifications of individuals who bid the jobs insofar as the needs of the service will permit. The Company will not post the qualifications with the job vacancy. Rec-

ognizing the qualifications of those who bid and the job requirements for the job, the Company will fill the job.

18.3 Qualifications may change from time to time depending upon availability of qualified people, changes in job content, etc. Outside applicants will be required to meet at least the same qualifications.

18.4 Employees assigned to apprenticeship classifications will not be allowed to bid out of their classification until they reach the journeyman classification.

18.5 No lateral bidding will be allowed within a department at any time. Employees will be allowed to bid laterally outside their department twice during their career, separated by at least one (1) year of employment.

18.6 Employees who are selected for such a vacancy will be on probation for a period of six (6) months and if the Company determines they are not qualified after a thirty (30) day trial period, the Company will have the exclusive right to move such employees back to their former position without loss of seniority.

18.7 Employees who are selected to fill multiple vacancies within a department shall be transferred either in fact or on paper in order of total bargaining unit service.

ARTICLE IX
GENERAL

1. The Company shall furnish all rubber hats, coats, boots, gloves, and all other necessary rubber equipment, for use in working on live equipment, and shall furnish flashlight and batteries for the protection of employees required to work outside during severe or rainy weather, and it is a rule of both parties that safety equipment be used. All tools for repairing gas meters shall be furnished by the Company. The Company will furnish meter readers with a replacement clothing allowance. This allowance will be granted once per year upon the employee's classification anniversary date. This allowance shall provide for $65

after the first year of service; $70 after the second year of service; and $80 after the third year of service. The company will expect the uniforms to be worn on the job at all times and that they will be clean and in good condition.

2. It is further understood and agreed that rubber gloves being furnished by the Company to each employee required to use them must be sterilized and tested before being given to employee, and said gloves must be tested at regular intervals thereafter for safety.

3. All trucks used in transporting crews shall be equipped with suitable covering so as to shelter employees, during rainy or severe weather, insofar as possible.

4. Any conditions now existing, that are not specifically mentioned or changed herein, shall continue as in the past, unless changed in the manner herein provided, and it is understood that changes mutually agreeable to the parties hereto may be made at any time.

5. The right to employ, promote, discipline, and discharge employees, and the management of the properties are reserved by and shall be vested exclusively in the Company. It is agreed, however, that promotions shall be on classification seniority, ability and qualifications. Ability and qualifications being sufficient, classification shall prevail. The Company shall have the right to determine how many employees it will employ or retain, together with the right to exercise full control and discipline in the interest of the proper service and conduct of its business. The right to promote, discipline, and discharge an employee is subject to the provisions of this Agreement.

6. Paydays shall be every two (2) weeks (on Friday), excepting that when a payday falls on a holiday, payday shall be on the preceding day.

7. When employees are called back to work after having been released from their regular day's work and have left the premises, they shall receive overtime pay.

The minimum call-out shall be three (3) hours at the established overtime rate, except when the call continues beyond the regular starting time of the employee's next work day. Work beyond the regular starting time of the next regular day shall be paid at straight time and the employee shall not be required to return home.

7.1 When it is necessary to call out a crew after 5:00 a.m. on a regularly scheduled workday, a regular crew may be called.

7.2 When employees are called out for work they will be allowed one-half (1/2) hour travel time for reporting to work, and allowed one-half (1/2) hour travel time when released from work. When employees are called to prearranged scheduled work other than on their regularly scheduled workday, their time will start when they report to work, providing that such employees are notified prior to 8:00 p.m. the previous day.

7.3 If an employee is called back more than once between two (2) consecutive workdays, his pay for such intermittent work, shall not be less than three (3) hours at the applicable overtime rate or more than he would have received during any established eight (8) hour work period, had he worked continuously for such period.

7.4 Time worked in excess of fourteen (14) continuous hours shall be paid for at not less than two (2) times the basic rate until released from duty. An employee who has worked fourteen (14) or more continuous hours shall, upon release, be entitled to an eight (8) hour rest period before he returns to work. If the rest period extends into his regularly scheduled workday, he shall lose no time thereby. In the event an employee is recalled to work before the expiration of his eight (8) hour rest period, he shall be compensated at double the straight time rate of pay until he is again released from work.

8. Any employee who is called out for work before his regular scheduled work time, and who then continues

with his regular hours of work, will, when work permits, be furnished a meal or meal allowance.

8.1 When it is necessary that employees continue work after the regular quitting time, they will be furnished a meal two (2) hours after quitting time, except employees quitting at 4:30 p.m. shall be furnished a meal one and one-half (1 1/2) hours after quitting time, and at intervals of not more than six (6) hours thereafter while they continue to work.

8.2 When employee is called out for work, the regular meal times shall be considered to be 6:00 a.m., 12:00 noon, 6:00 p.m., and 12:00 midnight. Provided the employee has worked three (3) continuous hours and a designated meal time occurs during this continuous period, the employee shall be entitled to a meal and the Company shall furnish a meal as close to the regular meal time as the work situation permits.

8.3 Any meal to which an employee may be entitled under these provisions if not taken before such employee is released from duty, such employee shall be paid an amount equal to thirty (30) minutes time at the appropriate rate and may accept the amounts set forth in 8.4 as applicable in lieu of such meal, or eat the meal at Company expense and allowed thirty (30) minutes time.

8.4 For employees to whom the meal allowance provisions are applicable, five dollars ($5.00) shall be paid as meal allowance.

8.5 The above provisions do not apply to prearranged overtime, provided that the employees are previously notified that they are to carry lunches.

8.6 When an employee is called out for work and continues into his/her regular scheduled day, time for both the paid lunch period or the non-paid lunch period shall be counted toward meeting the fourteen (14) continuous hours' provision in the above paragraph. It is understood

that this provision does not change the intent of the provisions of Article V, Paragraph 3 and 3.1 with respect to lunch periods.

9. When crews travel out of headquarters and are to be away overnights, their expenses shall be paid by the Company.

10. Employees reporting for work and not being assigned shall be paid two (2) hours' time for so reporting.

11. Crew leaders in all areas of the Company in charge of a crew of three (3) or less men shall be required to perform a regular journeyman's duties unless it would interfere with his properly looking after his responsibility as crew leader, and the safety of the men in his charge. A crew leader in charge of a crew of four (4) or more men shall not be required to perform a regular journeyman's duties.

11.1 A crew leader in the garage will perform the duties of a journeyman mechanic regardless of the number of men in his charge.

11.2 When an employee is temporarity upgraded to the classification of crew leader, compensation for paid absence time for which he is eligible under the provisions of this Agreement shall be based on the crew leader's rate of pay provided, however, that the individual must have served as crew leader a majority of his regularly scheduled workdays during the preceding ninety (90) calendar day period and provided further that the indivudual must have served as a crew leader within the two (2) calendar week period prior to the said absence.

11.3 When a temporary crew leader position has been filled for twelve (12) consecutive calendar months on a full-time basis, the Company will review the situation and if it appears the condition will continue, it will appoint a full-time crew leader. This provision does not include temporary crew leader assignments to replace employees who are disabled.

11.4 When permanent vacancies to the position of crew leader are filled, employees will be selected to fill the vacancy in accordance with Article VIII, Paragraph 3. Such employees will be considered on probation for ninety (90) days, and if, for some reason, they cannot fulfill the requirements of the job they will be returned to their former classification and retain all the seniority accrued before the promotion, including time spent in the crew leader's classification, up to ninety (90) days. Employees who are not retained in the crew leader classification will be eligible to be considered for a crew leader vacancy after three (3) years.

11.5 When promotions are made to the classification of foreman, management shall have the sole right to determine such promotion without regard to classification seniority as outlined in Article IX, Paragraph 5, provided the employee has held the classification of journeyman or crew leader, as the case may be, for at least one (1) year and has been on the Company payroll for at least five (5) years.

12. It is understood by the parties hereto that management people, who are not a part of the bargaining unit, shall not act in other than a supervisory capacity, except in emergencies. This is not intended to prevent such management person from protecting life or property, giving occasional or emergency assistance or performing work for the purpose of instruction. However, the primary function of a supervisor is supervision, and he is not to perform work which will eliminate an employee or interfere with supervision.

13. It is agreed that journeymen in all areas of the Company may be assigned truck driving duties.

14. Crew leaders in charge of a crew will not be assigned truck driving duties on a regular basis.

15. It is agreed that the work of erecting and repairing distribution substations, and the installation and repair of equipment in transformer vaults shall be performed by workers of the proper classification. It is further agreed that the electrical work in new indoor substations, major changes or additions to existing indoor substations which increase the capacity of such stations, shall be performed by members of the I.B.E.W. having jurisdiction over such classification of work. Work now done by the members of the Union shall continue under the jurisdiction of the Union.

16. Gas distribution employees may be temporarily assigned to do gas service work. Assignments will be made on a voluntary basis according to seniority, and if there is no volunteer the man with the lease seniority will be assigned. Employees will be given forty-eight (48) hours' notice with a minimum assignment of five (5) working days and a maximum assignment of thirty (30) working days. Gas construction crews may be assigned to install meter bar, bracket, regulator, and meter (complete meter set on outside meter installation), in conjunction with gas service installation. The practice of using combination employees in the districts will continue.

17. With respect to meter readers, it is agreed that the Company may, at its option, implement a bonus plan where there are city routes.

18. Employees in the Suburban Division will be assigned gas and/or electric location duties at their regular rate of pay. This provision excludes locating duties within the Pekin city limits. Within the Pekin city limits, gas locating duties will be assigned to gas employees, and electric locating duties will be assigned to electric employees.

ARTICLE X

1. Due to the use of improved machinery and mechanical equipment in the evolution of the utility industry, and the vast amount of work now being done by power driven tools and equipment, both parties to this Agreement hereby agree that all such tools and equipment used in the work done by employees in this bargaining unit, shall be operated by employees in this bargaining unit.

2. Employees of the Company, members of the Union, agree that they will perform loyal and efficient work and services; that they will use their influence and best endeavors to protect the property of the Company and its interest; that they will cooperate with the Company in promoting and advancing the welfare and prosperity of same at all times.

3. Should differences arise between the Company and any of its employees represented by the Union as to the meaning or application of any of the Articles in this Agreement, or if an employee believes he has been treated unjustly, the grievance shall be handled in the following manner:

3.1 The aggrieved employee and/or the steward shall attempt to adjust the grievance with the immediate supervisor when the grievance is first known.

3.2 Should the above step fail to settle the grievance, the aggrieved employee and/or the union representative must write the grievance and submit it to the work area supervisor within the following seventy-two (72) hours excepting Saturday, Sunday, or holidays. The aggrieved employee must sign the grievance before it is submitted. A written answer must be given the aggrieved withing seventy-two (72) hours. Either party may call a meeting to clarify its position and if witnesses are to be used they shall be limited to three (3) for each party.

3.3 Should the above step fail to settle the grievance, the union representative may submit the written grievance

to the manager within the following seventy-two (72) hours excepting Saturday, Sunday, or holidays. A written answer must be given the aggrieved within seventy-two (72) hours. Either party may call a meeting to clarify its position and if witnesses are to be used they shall be limited to three (3) for each party.

3.4 Should the above step fail to settle the grievance, the grievance may then be submitted to the General Manager or Manager of, and Labor Relations Manager in charge of the area for consideration within the following seventy-two (72) hours excepting Saturday, Sunday, or holidays. A written answer must be given the aggrieved within seventy-two (72) hours. Either party may call a meeting to clarity its position and if witnesses are to be used they shall be limited to three (3) for each party.

3.5 Upon failure to agree, an arbitration board shall be constituted in the following manner: On or before seven (7) days from the date of such failure to agree, the party hereto who shall have first raised and presented the difference or question to be arbitrated shall notify the other party, in writing, of the names and residences of three (3) members of a committee designated by it. On or before three (3) days from receipt thereof, the other party shall notify the first party, in writing, of the names and residences of three (3) members of a committee designated by it. Within one (1) week thereafter, the disagreement shall be referred to this Joint Arbitration Board. If the Joint Arbitration Board fails to resolve the issue, then the matter shall be submitted to arbitration for resolution.

The Labor Relations Manager and the Business Manager of Local Union 51 shall attempt to agree upon an impartial arbitrator to hear each grievance. If they are unable to agree on an arbitrator, the parties will request of the American Arbitrations Association a panel or panels of arbitrators, from which one shall be selected to hear the evidence and render a decision without avoidable delay.

The Company and the Union agre that the decision of the arbitrator shall be final and binding on both parties; however, the arbitrator shall have no power to change, or detract from, or add to, the provisions of this labor agreement.

4. Each party shall bear the expense of its own arbitrators, and the expense of the neutral arbitrator shall be borne equally by both parties.

5. Nothing herein contained shall require either party hereto to do or refrain from doing anything required or permitted to be done by the Constitution of the United States or Constitution of the State of Illinois.

6. In the event that any provision of this Agreement shall conflict with any Federal or State Law, order, direction, or regulation now or hereafter enacted or issued, such provision hereof shall not remain operative or binding upon the parties hereto, but the remaining portions of the Agreement shall remain in force and effect.

CENTRAL ILLINOIS LIGHT COMPANY

By _____
Vice President

By _____
Vice President

By _____
Labon Relations Manager

**LOCAL UNION NO. 51,
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS**

By _____
Business Manager

DEPARTMENTS – CLASSIFICATIONS AND WAGE RATES

	Effective 7-1-83	Effective 7-1-84	Effective 7-1-85
Underground Department			
Crew Leader	15.890	16.685	17.520
Temporary Cable Foreman	15.890	16.685	17.520
Cable Splicer	14.615	15.345	16.110
Cable Splicer Apprentices			
Fourth Year	13.155	13.815	14.505
Third Year	12.425	13.045	13.695
Second Year	11.695	12.280	12.895
First Year	11.115	11.670	12.255
Cable Splicer's Helper	10.855	11.400	11.970
Combination Truck Driver & Cable Splicer's Helper (Heavy Duty)	11.690	12.275	12.890
Line Department			
Temporary Line Foreman	15.890	16.685	17.520
Crew Leader	15.890	16.685	17.520
Lineman	14.615	15.345	16.110
Troubleman	14.615	15.345	16.110
Apprentice Lineman			
Fourth Year	13.155	13.815	14.505
Third Year	12.425	13.045	13.695
Second Year	11.695	12.280	12.895
First Year	11.115	11.670	12.255
Pole Hole Digger Driver & Mechanic	12.490	13.115	13.770
Tool Repairman & Reclaim Man	11.930	12.525	13.150
Combination Truck Driver & Groundman			
Heavy Duty Line Trucks	11.690	12.275	12.890
Other	10.520	11.045	11.595
Groundman or Patrolman	10.520	11.045	11.595

	Effective 7-1-83	Effective 7-1-84	Effective 7-1-85
Forestry Department			
Temporary Tree Foreman	15.105	15.860	16.655
Tree Crew Leader	15.105	15.860	16.655
Tree Trimmer	13.360	14.030	14.730
Apprentice Tree Trimmers			
Second Year	11.630	12.210	12.820
First Year	10.690	11.225	11.785
Combination Truck Driver & Tree Trimmer Helper			
Heavy Duty Trucks	11.690	12.275	12.890
Other	10.520	11.045	11.595
Substation Maintenance & Construction			
Crew Leader	15.890	16.685	17.520
Temporary Foreman	15.890	16.685	17.520
Electricians	14.615	15.345	16.110
Apprentices Electricians			
Fourth Year	13.155	13.815	14.505
Third Year	12.425	13.045	13.695
Second Year	11.695	12.280	12.895
First Year	11.115	11.670	12.255
Substation Repairman (Jerald fix only)	12.875	13.520	14.195
Electrician Groundman	10.765	11.305	11.870
Combination Truck Driver & Electrician Groundman (Heavy Duty)	11.690	12.275	12.890
Unskilled Help			
First 6 Months	9.235	9.695	10.180
Thereafter	9.425	9.895	10.390

	Effective 7-1-83	Effective 7-1-84	Effective 7-1-85
Electric Service Department			
Crew Leader	15.890	16.685	17.520
Line Troubleman	14.615	15.345	16.110
Complaint Man	12.170	12.780	13.420
Maintenance Man	10.295	10.810	11.350
Maintenance Man Helper	9.800	10.290	10.805
Maintenance and/or Cutoff Man	10.855	11.400	11.970
Combination Truck Driver & Groundman (Heavy Duty)	11.690	12.275	12.890
Groundman	10.520	11.045	11.595
Unskilled Help			
First 6 Months	9.235	9.695	10.180
Thereafter	9.425	9.895	10.390
Relay Department			
Relay Technician – Temporary Crew Leader	16.020	16.820	17.660
Senior Relay Technician	15.420	16.190	17.000
Relay Technician	14.845	15.585	16.365
Assistant Relay Technician	12.985	13.635	14.315
Electric Meter Department			
Crew Leader	14.950	15.700	16.485
Temporary Foreman	15.135	15.890	16.685
Journeyman Meterman	13.865	14.560	15.290
Apprentice Meterman			
Fourth Year	12.480	13.105	13.760
Third Year	11.785	12.375	12.995
Second Year	11.090	11.645	12.225
First Year	10.535	11.060	11.615
Meterman Helper	11.695	12.280	12.895
Instrument Man	14.290	15.005	15.755

	Effective 7-1-83	Effective 7-1-84	Effective 7-1-85
Meter Readers			
City Routes (Bonus Plan)	9.425	9.895	10.390
City Routes (No Bonus Plan)	10.955	11.505	12.080
Rural Routes	10.955	11.505	12.080
Skip Readers	9.425	9.895	10.390
Gas Street Department			
Temporary Foreman	14.580	15.310	16.075
Crew Leader	14.580	15.310	16.075
Journeyman, Welders, Regulator Men, Industrial Metermen, Complaint Men and Inspectors	13.115	13.770	14.460
Apprentice Fitter			
Third Year	11.805	12.395	13.015
Second Year	11.150	11.705	12.290
First Year	10.490	11.015	11.570
Helpers			
First 12 Months	10.410	10.930	11.475
Thereafter	10.855	11.400	11.970
Gas Control Technician	13.855	14.550	15.280
Journeyman Fitter Welder (Certified)	13.470	14.145	14.850
Combination Truck Driver & Helper	11.690	12.275	12.890
Unskilled Help			
First 6 Months	9.235	9.695	10.180
Thereafter	9.425	9.895	10.390

Employees operating the Propane Plant are to receive $.05 per hour more than their regular classification during the period of such work.

	Effective 7-1-83	Effective 7-1-84	Effective 7-1-85
Gas Service Shop Department			
Temporary Foreman	14.580	15.310	16.075
Journeyman, Service Men, Specialist On Testing Controls & Technical Installation, Combination Gas and Electrical and Burner Installers	13.115	13.770	14.460
Apprentice Serviceman			
Third Year	11.805	12.395	13.015
Second Year	11.150	11.705	12.290
First Year	10.490	11.015	11.570
Helpers			
First 12 Months	10.410	10.930	11.475
Thereafter	10.855	11.400	11.970
Gas Meter Repair Department			
Temporary Foreman	13.990	14.690	15.425
Gas Meter Repairman & Technician	12.445	13.065	13.720
Journeyman Meter Repairman	12.290	12.905	13.550
Helpers			
First 12 Months	10.410	10.930	11.475
Thereafter	10.855	11.400	11.970

	Effective 7-1-83	Effective 7-1-84	Effective 7-1-85
Garage			
Crew Leader - Peoria & Springfield Garages	14.455	15.180	15.940
Mechanics	12.990	13.640	14.320
Mechanics Helpers			
First 12 Months	10.410	10.930	11.475
Thereafter	10.855	11.400	11.970
Unskilled Help			
First 6 Months	9.235	9.695	10.180
Thereafter	9.425	9.895	10.390
Storeroom Department			
Stores Crew Leader	12.655	13.290	13.955
Temporary Stores Crew Leader	12.655	13.290	13.955
Storesman	11.465	12.040	12.640
Storesman Helpers	10.410	10.930	11.475
Appliance Service Man (Pekin-Lacon)	12.990	13.640	14.320
Unskilled Help			
First 6 Months	9.235	9.695	10.180
Thereafter	9.425	9.895	10.390
Suburban Districts			
Temporary Line Foreman	15.890	16.685	17.520
Crew Leader - Electric	15.890	16.685	17.520
Lineman	14.615	15.345	16.110
Apprentice Lineman			
Fourth Year	13.155	13.815	14.505
Third Year	12.425	13.045	13.695
Second Year	11.695	12.280	12.895
First Year	11.115	11.670	12.255

Suburban Districts (Cont'd.)	Effective 7-1-83	Effective 7-1-84	Effective 7-1-85
Service Man	13.115	13.770	14.460
Crew Leader - Gas	14.580	15.310	16.075
Journeyman Meterman	13.865	14.560	15.290
Journeyman, Welders, Regulator Man, Industrial Metermen, Complaint Men and Inspectors	13.115	13.770	14.460
Apprentice Fitter			
Third Year	11.805	12.395	13.015
Second Year	11.150	11.705	12.290
First Year	10.490	11.015	11.570
Meter Reader			
City Routes (Bonus Plan)	9.425	9.895	10.390
City routes (No Bonus Plan)	10.955	11.505	12.080
Rural Routes	10.955	11.505	12.080
Skip Readers	9.425	9.895	10.390
Combination Truck Driver & Groundman			
Heavy Duty Line Trucks	11.690	12.275	12.890
Other	10.520	11.045	11.595
Groundman, Patrolman & Tree Trimmers Helpers	10.520	11.045	11.595
Unskilled Help			
First 6 Months	9.235	9.695	10.180
Thereafter	9.425	9.895	10.390